

# REEXAM PROCEDURES MANUAL



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*MT Department of Natural Resources & Conservation  
Water Resources Division  
Updated January 2024*

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# REEXAM PROCEDURES MANUAL

## PURPOSE

This document is intended as a procedural guide to completing reexamination. In late 2023, the department recognized the need to develop clear and coherent processes to complete reexamination work pursuant to the MT Water Court’s 2012 *Order Addressing Reexamination* and subsequent orders. This manual replaces the previous guidance (Reexamination Guidebook Last Updated March 2019). This guidebook is the result of the collaborative efforts of adjudication specialists; it captures the existing institutional knowledge of our specialists and consolidates existing resources. In keeping with the statutory requirement to have all examination and reexamination of claims completed by June 30, 2025, the adjudication program has reorganized our structures and redefined our process to best meet the needs of Montana water users and to stay faithful to our mission 50 years after the passage of the Montana Water Use Act.

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# I. INTRODUCTION

## OVERVIEW

The overall adjudication process involves a working relationship between the Montana Water Court and the DNRC. Each basin is subject to the same processes to arrive at a Final Decree, which is the Water Court’s final declaration on historical water rights in that basin. The flow chart below shows the general progression of the process, although it is not always linear. Often, different stages of DNRC review will overlap with different stages of decree issuance.

During these processes, it is important to remember that DNRC plays an **advisory** role in the adjudication process; we are not the final authority on these claims, but rather technical experts to examine the claims. Ultimately, the Water Court is the final authority on statements of claim. The adjudication program serves this role through claims examination which is designed to:

- ◆ To provide the statewide adjudication with thorough and timely review of existing water rights claims for completeness, accuracy, and reasonableness.
- ◆ To check that the elements of a water right, individually and in combination, are reasonable and accurate using the policies and procedures specified in the Montana Supreme Court Water Right Claim Examination Rules (W.R.C.E.R.) and the examination manual.
- ◆ To identify for further review through the decree process those aspects of a water right that do not appear reasonable or accurate.

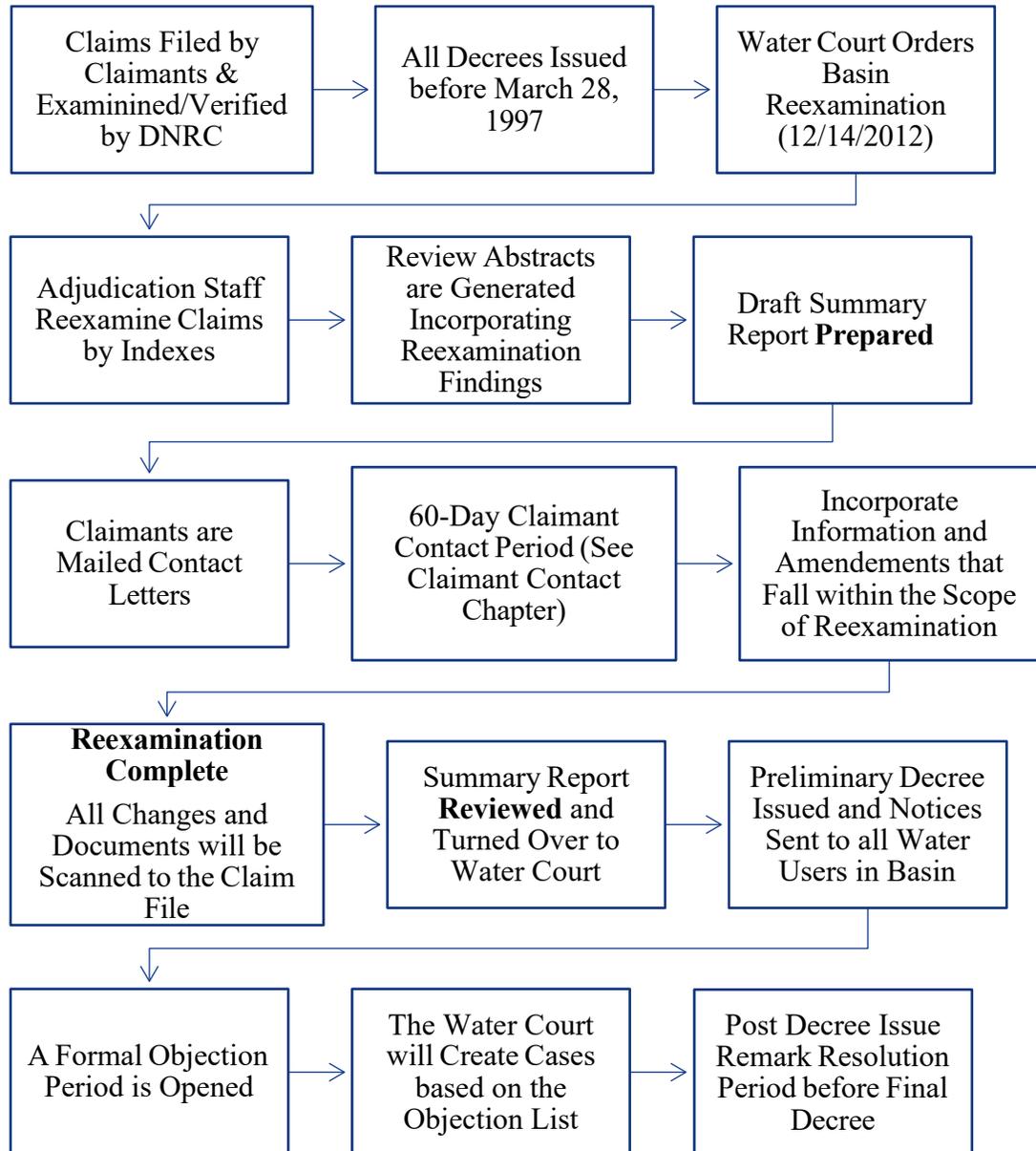
Every statement of claim must undergo the process of examination as set forth in the Water Right Claim Examination rules, adopted 07/15/1987. Prior to the adoption of these formal rules, DNRC conducted *verification* of statement of claims. The department “verified” over 80,000 claims until state and federal parties filed proceedings with the Montana Supreme Court in 1985, arguing that the verification procedures were seriously flawed. In 1987, the Water Right Claim Examination Manual was drafted to provide step-by-step procedures for DNRC staff to follow in implementing the Supreme Court rules on a day-to-day basis. So, the verification procedures employed at the very beginning of the claim review process are obsolete and superseded by the claim examination procedures.

Because of this, the Water Court petitioned the 2005 legislature to authorize the DNRC to “reexamine” statements of claim in basis that underwent verification. However, it was unclear to what extent these claims needed to be reexamined considering the new rules. Eventually<sup>1</sup>, this resulted in the 2012 Order Addressing Reexamination (Appendix, B), which orders the DNRC to reexamine previously verified claims in a limited scope. This Reexam Procedures Manual details these reexamination procedures.

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<sup>1</sup> Please read the ORDER ADDRESSING REEXAMINATION, 12/17/2012, for a more detailed history. (APPENDIX, B)

Once both examination and reexamination are complete in a basin, the statements of claim are handed off to the Water Court. The Program Manager will issue a summary report to the Water Court upon completion of the summary review. The summary report is a comprehensive compilation of all water rights in a basin. The Water Court will in turn incorporate DNRC's findings into the issuance of the preliminary decree.



## REEXAMINATION

The Water Court Order Addressing Reexamination, dated December 14, 2012 (Appendix, B), orders the DNRC to partially reexamine approximately 90,000 claims in Temporary Preliminary Decree and Preliminary Decree basins that were decreed prior to March

27, 1997, when current<sup>2</sup> examination standards. The goal of reexamination is not necessarily to scrutinize verified claims with the same standard as the 2005 rules, but rather to bring them to a standard that allows the Water Court to create a clear and enforceable decree. The reexamination order and subsequent orders identifies the following action items for reexamination in preparation for the court's issuance of supplemental decrees in basins with Temporary Preliminary Decrees or Preliminary Decrees:

- 1) **Decree Exceeded.**
- 2) **Filed and use rights predating District Court decrees.**
- 3) **Over-claimed filed notices of appropriation.**
- 4) **Claims with multiple uses.**
- 5) **Standardization and identification of point of diversion, source, and ditch name.**
- 6) **DNRC Standardization Proposal**
- 7) **Supplemental Order Regarding Fish and Wildlife, Wildlife, and Recreation Claims, 04/17/2013.**
- 8) **Second Amended Order on Period of Diversion - Statewide, 11/10/2014.**
- 9) **ORDER REGARDING ISSUE REMARKS IN BASINS UNDER REEXAMINATION, August 24, 2017**
- 10) **April 26, 2011 Order on Split Claim Remarks**
- 11) **December 9, 2022 Order Regarding Interbasin Transfer Remarks**
- 12) **Examination of late claims.**
- 13) **Application of claim standards.**

In addition to the reexamination order, the court has also directed the examination of BLM reserved claims, as directed in Judge Loble's September 23, 2009 order (Appendix, C).

Indexes are generated and reviews are performed to bring the elements listed above into compliance with their respective orders. This manual describes the procedures for accomplishing each index that contributes to the completion of reexamination.

The DNRC is authorized by the Water Court to only make changes to water rights specifically outlined in the 2012 reexamination order. The DNRC **will not** change elements in TRIDENT that do not pertain to the action items identified in the reexamination orders. Also, the DNRC will not change elements or remarks that have been litigated.

#### Withdrawn, Terminated, and Dismissed Claims:

An additional important note, the reexamination only applies to claims with an ACTIVE status in TRIDENT. The reexamination effort **will not** include Withdrawn, Terminated, or Dismissed water right numbers. If Withdrawn, Terminated, or Dismissed water right numbers are included in any of the review datasets, please delete or disregard them.

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<sup>2</sup> Current examination standards were set in 2005 in response to benchmarks set by the state legislature. The 2013 Claims Examination Manual is the most current guide for the examination process.

## TRIDENT GUIDELINES

### Version

A reexamination version of a statement of claim in Trident exists to facilitate changes to the reexamined elements without changing the original version of the water right. Trident Administrator will add the reexamination versions to Trident prior to the reexamination of a basin. **Only make changes associated with reexamination to the reexamination version.** Newly filed exempt claims, certain late claims, withdrawn, terminated, and dismissed claims will not have a reexamination version. By default, most reexamination versions have a December 14, 2012, operating authority date<sup>3</sup>.

### Element Origin

Any Trident field with a litigated element or remark should **not** be edited. This is vital to maintain a decision issued by the Water Court regarding a particular element in a previous decree. The DNRC will only issue remark litigated elements, if that element is identified as incorrect by the DNRC, and the issue remark will assist the court in the distribution of the right.

### Preparing a Basin

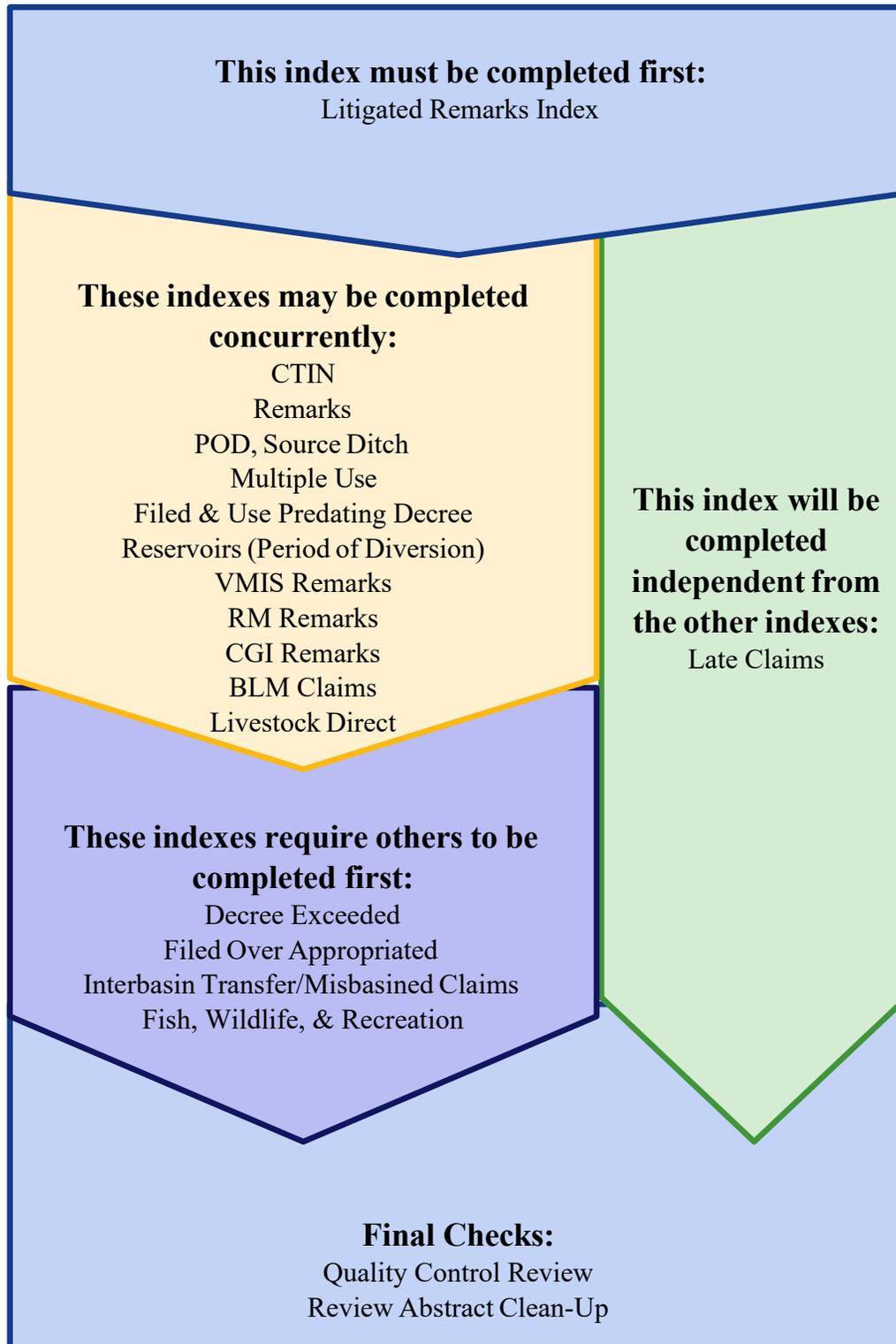
Trident Administrator will create reexamination versions and generate review indexes for a basin upon request of the Program Manager. An index is a query for specific elements of water rights in a basin to aid specialists in the reexamination of those elements. These indexes usually come in excel format and will be distributed to specialists by the Team Leads. Each basin has its own folder where basin work products are centrally stored and available. Each folder will house the indexes for that basin along with a work plan. Each work plan outlines the various tasks that will be undertaken.

Workflow and order of indexes may vary by basin depending on priorities, number of claims subject to reexam, complexity of claims in the basin, and number of staff available. Some indexes must be completed before another index or check can begin. The Team Leads are responsible for organizing the work plan and ensuring that each element of reexamination is completed prior to the set deadline. Keep in mind that the Water Court's deadline for a basin is the deadline to deliver the summary report, so reexamination must be complete at least **2.5 months** prior to the Water Court's deadline for a basin.

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<sup>3</sup> Some reexamination versions may have the date of a basin decree as the operating authority for public query purposes, under limited circumstances. Do not change the operating authority date.

## WORKFLOW OVERVIEW



## II. DEFINITIONS

<i>Abstract</i>	The computer printout of each claim of an existing water right showing the information submitted on the original or amended statement of claim, any changes authorized by the Montana Supreme Court Water Right Claim Examination Rules (W.R.C.E.R) or by the Water Court, remarks noting any obvious factual or legal issues presented by the claim, and other remarks explaining the nature and extent of the claimed water right.
<i>Acreage</i>	The number of irrigated acres.
<i>Adjudication</i>	The judicial determination of water rights that existed prior to July 1, 1973, including the total or partial abandonment of existing water rights occurring at any time before the entry of the Final Decree.
<i>Amendment</i>	An amendment is a written request by the claimant submitted to the DNRC to amend certain elements of a statement of claim.
<i>Appropriate</i>	To divert, impound or withdraw a quantity of water for a beneficial use.
<i>Appurtenant Land</i>	The land which a water right benefits or belongs to.
<i>Associate Water Judge</i>	A water judge appointed by the Chief Justice of the Montana Supreme Court to work on cases as assigned by the Chief Water Judge as provided for in Title 3, Chapter 7, Part 2, MCA.
<i>Associated Rights</i>	A statement of claim uses the same development (well, reservoir, point of diversion) as 1) a federal reserved water right claim 2) a new appropriation (post-July 1, 1973, water right), or 3) an exempt right. The adjudication program does not associate the place of use involving statements of claim and post-July 1, 1973, water rights.
<i>Basin Code</i>	The respective number/letter combination used to identify each of the 85 basins in Montana (e.g., 43QJ) according to the Atlas of Water Resources of Montana prepared by the Montana Water Resources Board.
<i>Basin Lead</i>	The specialist appointed as the point of contact with the Water Court on a particular basin through the reexam Process.
<i>Beneficial Use</i>	A use of water recognized as beneficial prior to July 1, 1973, and used for the benefit of the appropriator, other persons, or the public and may include but not be limited to irrigation, stock, domestic, fish and wildlife, industrial, mining, municipal, power generation, and recreational uses.
<i>Centroid</i>	An approximate legal description that puts the point of diversion in the center of the described location.
<i>Claimant</i>	Any individual, association, partnership, corporation, state agency, political subdivision, Tribe, the United States or any agency of the United States, or any other entity, who has filed a statement of claim or is successor in interest to a statement of claim as identified in the centralized records system.
<i>Climatic Area</i>	Areas defined by differing climatic and geographic conditions containing similar crop consumptive use data as delineated by the United States Department of Agriculture, Natural Resource Conservation Service.

<b><i>Dam Height</i></b>	The vertical distance from the lowest point of the dam crest to the lowest point on the natural ground along the downstream toe of the dam.
<b><i>Decree Abstract</i></b>	The abstract that is part of Water Court issued decree. The decree abstract contains the original or amended claim information, changes authorized by the Water Right Adjudication Rules or the Water Court, Water Court ordered data, and remarks.
<b><i>Decreed Right</i></b>	A claimed water right determined in a court decree prior to the commencement of this adjudication or after commencement of this adjudication as provided in §85-2-216, MCA.
<b><i>Developed Spring</i></b>	A spring with some man-made development at or below the point of extrusion which brings additional flow to the surface which would not naturally be available for use and is classified as groundwater.
<b><i>Element (of a Water Right)</i></b>	"Element" means the parts of a water right that must be included in a decree, by statute as defined in §85-2-224(6), MCA
<b><i>Enforceable Priority Date</i></b>	A priority date of June 30, 1973, or later, which is administratively assigned to late claims that are subordinate to valid, timely filed claims and certain permits in accordance with §85-2-221(3)(f), MCA.
<b><i>Examination</i></b>	The initial process under the W.R.C.E.R. of examining, gathering information, and reporting data, facts, and issues pertaining to the claims of existing water rights. Prior to the adoption of the W.R.C.E.R. on July 15, 1987, this process was referred to as "verification."
<b><i>Filed Appropriation Right</i></b>	A water right which has been filed and recorded in the office of the county clerk and recorder as provided by statute prior to July 1, 1973.
<b><i>Final Decree</i></b>	The final Water Court determination of existing water rights within a basin or subbasin, as described in §85-2-234, MCA.
<b><i>Flow Rate</i></b>	The rate at which water has been diverted, impounded, or withdrawn from the source for beneficial use.
<b><i>Groundwater</i></b>	Any water under the surface of the land including the water under the bed of any stream, lake, reservoir, or other body of surface water.
<b><i>Implied Claim</i></b>	A claim authorized by the Water Court to be separated and individually identified when a statement of claim includes multiple rights.
<b><i>Index</i></b>	A working document that indexes specific elements of a water right claim subject to reexamination, such as owner, source, point of diversion, certain remarks, etc. A series of indexes are generated at start of reexamination.
<b><i>Irrigation</i></b>	A beneficial use of water. The application of water to the land to eliminate the moisture limitation to crop production. (Soil Conservation Service, 1979)
<b><i>Irrigation District</i></b>	A statutory district created pursuant to Title 85, Chapter 7, MCA for the purpose of supplying irrigation water and other uses to its members.
<b><i>Lake</i></b>	A naturally occurring inland body of water.
<b><i>Late Claim</i></b>	A claim filed with the department after 5:00 p.m., April 30, 1982, and physically submitted or postmarked on or before July 1, 1996. Late claims are subject to certain terms and conditions pursuant to §§85-2-221(3), 85-2-222 and 85-2-225, MCA.

<b><i>Legal Land Description (LLD)</i></b>	The description given to a parcel of land in terms of, but not limited to, quarter section, section, township, range, and county.
<b><i>Means of Diversion</i></b>	The structures, facilities, or methods used to appropriate water from the source of supply. For instream or inlake appropriations, the means of diversion is “instream” or “inlake”.
<b><i>Multiple Use</i></b>	A relationship between two statement of claims that use that water for different purposes but are based on the same historical appropriation of water. Although there may be multiple statements of claim, they are considered one water right.
<b><i>Natural Overflow</i></b>	The water which results in the flooding of land adjoining a stream during high flow with no man-made diversion involved.
<b><i>Natural Subirrigation</i></b>	A naturally occurring high water table condition that supplies water for crop use.
<b><i>Non-consumptive</i></b>	A beneficial use of water that does not cause a reduction in the source of supply.
<b><i>Objection</i></b>	A formal objection to certain elements of a statement of claim submitted to the Water Court during an appointed period in the adjudication process prior to the issuance of a Final Decree.
<b><i>Other Uses</i></b>	All uses of water for beneficial purposes other than stockwater, domestic, and irrigation uses.
<b><i>Owner</i></b>	Any person, according to §85-2-102, MCA, who has title or interest in water rights or properties. This term is often used interchangeably with “claimant”.
<b><i>Period of Diversion</i></b>	The period in a calendar year when water is diverted, impounded, or withdrawn from the source.
<b><i>Period of Use</i></b>	The period in a calendar year when water is used for a specified beneficial use.
<b><i>Place of Use (POU)</i></b>	The lands, facilities, or sites where water is beneficially used.
<b><i>Point of Diversion (POD)</i></b>	The location or locations where water is diverted from the source. For instream or lake use appropriations, the point of diversion is the portion of the source in which the instream or lake use occurs.
<b><i>Preliminary Decree</i></b>	The preliminary Water Court determination of existing water rights within a basin or subbasin as described in §85-2-231, MCA, which precedes the Final Decree.
<b><i>Priority Date</i></b>	The allocation date, or date of first use associated with a beneficial use of water which determines ranking among water rights, usually expressed by day, month, and year.
<b><i>Remarks</i></b>	Statements added to an abstract by the department or the Water Court to limit or define a water right, to explain unique aspects of the water right, and to identify potential factual and/or legal issues. Remarks that limit, define, or explain unique aspects of a claim are “clarifying” or informational remarks. Remarks that identify potential factual or legal issues are “issue” remarks which are underlined on an abstract.
<b><i>Reserved Water Rights</i></b>	A right to use water that is expressly or impliedly reserved by treaty, an act of Congress, or an executive order based on Federal law.

<b><i>Reservoir</i></b>	A storage facility, created or augmented by man-made means, that impounds and stores water for beneficial use.
<b><i>Review Abstract</i></b>	A Trident generated report of the examination results. It is used as a tool to inform the claimant of their water right and any additional facts and findings, including potential issues. Review abstracts are the versions that the department will use to document changes during reexamination in PDF format.
<b><i>Source</i></b>	The specific supply from which water is taken for a beneficial use.
<b><i>Split Claim</i></b>	The division of one water right claim into two or more separate claims. When a claim is split, one portion of the claim maintains the original claim number and the other separated portions are assigned new claim numbers.
<b><i>Standards</i></b>	Trident application of specific guidelines to certain elements of a statement of claim at the conclusion of examining a claim.
<b><i>Statement of Claim</i></b>	A sworn statement of an existing water right, as defined in §85-2-224, MCA, filed with the department upon order of the Montana Supreme Court.
<b><i>Subbasin</i></b>	A designated area that drains surface water to a common point within a larger basin for decree administrative purposes only. These are not necessarily hydrologic boundaries.
<b><i>Summary Report</i></b>	The department’s report to the Water Court consisting of individual abstracts, the claimed and clarified data and a summary organized in indexes of the department’s examination/reexamination findings for each claim within a basin or subbasin.
<b><i>Supplemental</i></b>	Separate water rights for the same purpose, owned by the same claimant, and used on overlapping places of use.
<b><i>Surface Water</i></b>	Water occurring at or on the surface of the ground, including but not limited to any river, stream, creek, ravine, coulee, undeveloped spring, lake, or other sources of water.
<b><i>Team Lead</i></b>	The specialists appointed to lead examination/reexamination teams, organize workflow, and ensure the completion of projects on time.
<b><i>Temporary Preliminary Decree</i></b>	A Water Court decree, prior to the issuance of the preliminary decree, as necessary for the orderly administration of existing water rights pursuant to §85-2-231, MCA.
<b><i>TRIDENT</i></b>	Water Rights Information System. DNRC’s internal database for water rights information and stored files.
<b><i>Type of Historical Right</i></b>	The historical basis of an existing water right as a decreed right, filed appropriation right, reserved right or use right.
<b><i>Undeveloped Spring</i></b>	The flow from the spring is not increased by some development at its point of extrusion from the ground and is classified as surface water.
<b><i>Use Right</i></b>	A claimed existing water right perfected by appropriating and putting water to beneficial use without written notice, filing, or decree.
<b><i>Verification</i></b>	The initial process that DNRC undertook to check or “verify” statements of claim. This process was replaced by the examination process, according to the 2005 claims examination rules.

<b><i>Verified Motion to Amend</i></b>	An amendment formally submitted by claimants to the Montana Water Court as a part of the post decree process.
<b><i>Volume</i></b>	The amount of water which has been diverted, impounded, or withdrawn from the source over a period for beneficial use, usually measured in acre-feet per year.
<b><i>Waste and Seepage</i></b>	The loss of water through the design or operation of an appropriation of water distribution facility. Seepage is the movement of water through a porous soil; its origin could be from another's waste or occurring naturally.
<b><i>Water Judge</i></b>	A judge responsible for adjudicating existing water rights as provided for in §3-7-2, MCA.
<b><i>Water Master</i></b>	A person appointed by a Water Judge to assist in the adjudication of existing water rights as provided for in §3-7-3, MCA, and Rule 53 of the Montana Rules of Civil Procedure.
<b><i>Water Resource Survey (WRS)</i></b>	A survey of water resources and water rights in Montana on a county basis by the former state engineer's office or water resources board, predecessors of the department.
<b><i>Water Spreading</i></b>	Surface flood irrigation involving the diversion of occasional (flood or runoff) surface water from natural, usually non-perennial, water courses by means of dams, dikes, or ditches, or a combination of these. It differs from conventional irrigation because it is totally dependent on and regulated by the availability of water, not crop needs.
<b><i>Well</i></b>	Any artificial opening or excavation in the ground, however made, by which groundwater can be obtained or through which it flows under natural pressure or is artificially withdrawn.

# III. DOCUMENTATION

## OVERVIEW

Whenever you make a change to or remove something from a claim in reexamination, you need to document what you changed. Always include the resources you use to make that determination, your name (or initials), and the date of the change. Review Abstract PDFs serve as the primary documentation resource for our work<sup>4</sup>. These PDFs are seen by the Water Court and claim owners as the basis for our modifications to the rights. If we make modifications or add issue remarks without documentation, the Water Court is not going to infer our intent. Proper, coherent, and thorough documentation is critical to how the Water Court works through their processes. For this reason, documentation must be done in a specific way as is outlined in the sections below.

### Important Rules when documenting

- ◆ Please use a **dark** color (not black). No yellow or light colors. Light colors can be difficult to read, and when the Water Court reviews changes made to the claim, we would like it to be as easy as possible to review. Black is hard to distinguish from the abstract itself. Review Abstract PDFs will be scanned in color.
- ◆ Please use your color consistently during a basin (pick a color and stick with it). This makes it easier to distinguish between specialists' work.
- ◆ Use size 12 (or smaller) Times New Roman font. Water users and the Water Court should be able to read a comment quickly and not have to decipher fonts.
- ◆ The use of acronyms such as POD (Point of Diversion) and POU (Place of Use) and others can be used while documenting on a PDF or adding comments to your index in excel. However, when entering remarks into TRIDENT, use the full written out way every time. For example, type the words Point of Diversion instead of POD.

### Finding Saved Review Abstracts

Each reexamination version of a water right needs to have a single review abstract which documents all modifications to the water right as part of the reexamination process. **Before you make ANY changes to the claim**, you need to check and see if there is already a PDF created for the claim. To do this, you must navigate to the folder. All documented abstracts are stored in the same place. Go to file explorer.

MMBDATA (\\DNRHLN2382)/ADJUDICATION/Basin Data

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<sup>4</sup> Reexamination does not utilize worksheets like the examination process. However, other forms of documentation may be included in the reexamination process including claimant contact memos, questionnaires, maps, etc. See section on claimant contact for more information.

From there you find the basin you are working in. In that folder, you will find a folder called “Review Abstracts with Comments.” That is where you will find the abstracts already saved.

- ◆ Search for your water right in the top right corner search bar of the “Review Abstracts with Comments” folder. When searching, it is best to use only the water right number. This will catch any PDFs of that water right which may have been formatted slightly differently. If a file has been incorrectly named, it must be corrected using the correct naming convention (identified below). If the PDF for that water right already exists, open that document and proceed to “Documenting on Review Abstract PDF.”
  - ◆ BASIN [space]WRNUMBER[DASH]EXTENSION
  - ◆ Ex. **76H 123-00**
- ◆ If a PDF does not exist for that water right, you will need to go into TRIDENT and generate a review abstract and save it into the “Review Abstracts with Comments” folder.
- ◆ Review abstracts are to be generated using the “Reexamined” version of the water right. It is important to reiterate that a review abstract should be generated before any changes are made to the water right or abstract, so the reexamination change is clear to anyone reviewing the claim file.

### DOCUMENTING ON REVIEW ABSTRACT PDF

Now that the PDF is saved, we can document on it.

Once the PDF you saved is open, you will go to the right-hand side of the document and find the Tool Bar. Click on “comment” and this will cause a new pane to open at the top of the document.

- ◆ You use strikethrough when removing remarks. Use the pencil to cross text box off if someone documented adding a remark, and you document removing it. **Never delete someone’s text box**<sup>5</sup>. To add your documentation, you use the “Text Box” tool. To add missing info such as flow rate or volume, you use the “Text” tool.

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<sup>5</sup> Team Leads and quality control will clean up review abstracts before they are added to the claim files.

Type of Historical Right: USE  
 Purpose (use): STOCK Added FF009 RJ 07/11/2023  
 \*Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.  
 \*Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.  
 Source Name: SPRING, UNNAMED TRIBUTARY OF HUMP CREEK  
 Source Type: GROUNDWATER  
~~SPRING~~ Removed ST1Z archived remark that duplicated source as spring, 07/13/2023 RH

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr	Sec	Twp	Rge	County
1		NWNWNE	23	2S	17E	SWEET GRASS

SN remark added to show spring as minor source type. BA 7/1/2023

Once you make your comment and make proper changes to the claim, save the PDF and you're done. Try to save and close out of the PDF somewhat quickly when finished. Other people may try to make changes to that same PDF and if you have it open for long periods of time that can create issues for others and creates a higher chance of the file corrupting and losing the work.

In addition to adding text, use the pages function to add any additional documentation you might find necessary. For example, when conducting the POD index, it may be helpful to attach aerial photographs on another page in the PDF to support your findings. Or you may scan documents, such as a decree index, that are not already in the claim file. If the review abstract becomes cluttered with comments and you are short on room, you can also add an additional blank page to the PDF to make more room.

In the rare case that you are documenting a change that someone else made or are implementing changes from an index which another specialist worked on but could not implement into TRIDENT, you must still be specific with the reason for the change. Avoid comments such as "V40 remark removed because Brandon's index said so". Instead, you must find the reason for the change. We try to avoid these situations because it can result in a duplication of efforts, but we must make sure the review abstract contains why the change was made.

When adding a remark to a Review Abstract/Claim, make sure you write out the entirety of the remark at the bottom of the Review Abstract. **Do not** just list the remark code.

UPLOADING REVIEW ABSTRACTS TO RECORDS

After completion of the summary report preparation, the review abstracts created during reexamination will be added to the water right files as part of the official record. This is one reason the conventions described above are so important. The Post-Examination Team will compile and upload the review abstracts, the claimant contact letter, and any other documentation received from claimants to a Records folder. Records will then upload the files to FileNet.

# IV. CLAIMANT CONTACT

## OVERVIEW

Claimant contact can occur at any point during the adjudication process, so it is important to understand how the department can aid claimants during each stage of our process. Most claimant contact will involve answering a claimant's questions, so it is important for a specialist to understand the scope and reasoning behind what changes DNRC can make during reexamination. When talking to a claimant, it can be helpful to refer to the review abstract that the department has documented its changes on. This is one reason thorough documentation during reexamination is important.

Aside from answering questions, claimants may wish to resolve outstanding issues. To do so, a claimant may submit supplemental information to the file such as an affidavit, an amendment to a statement of claim, a questionnaire, a request to withdraw a statement of claim, or a request to withdraw interest in a statement of claim. These are just a few examples of what you may receive.

After quality control checks have been completed by the Quality Control Coordinator but prior to drafting a basin summary report, claimants will receive a letter notifying the claimant of the results of DNRC's reexamination. Once reexamination is complete, the Program Manager will send a claimant contact letter along with review abstracts to all claimants in a basin. Once DNRC sends out the letter, a formal 60-day contact period begins in which claimants may work with the DNRC to resolve outstanding issues. Any time a claimant contact is made, two factors determine how we can help the claimant:

- ◆ The decree status of the claim.
  - ◆ Most statements of claim have been included in some form of a decree. This means that DNRC is limited in what we can process. SB355, HB110, *some* split claims, *some* implied claims, and *some* late claims have not been included in a decree, so we have a greater ability to make changes to a claim.
- ◆ The stage in the adjudication process when contact is made.
  - ◆ Depending on where a statement of claim is in the adjudication process, a claimant's options are different. See below.

## RECEIVING SUPPLEMENTAL INFORMATION

Any time a claimant submits supplemental information to the DNRC, that information should be recorded into the claim file. Any materials a claimant submits should be date stamped upon receipt. It may be helpful to write a brief memo explaining a claimant's information. At times, a claimant may verbally convey information important to a claim; in this case, a specialist should write a memo detailing the information and send a copy to records management to put in the claim file. The only information that should be written down and sent to records management

is information which is directly related to the water right(s) in question and should not be personal in nature. Not everything said by a claimant should be written down and sent to records management.

### Information Received During Reexamination

If a claimant submits information during reexamination, a specialist can adjust elements of the claim *that are within the scope of reexamination*. For example, a claimant might submit a reservoir questionnaire (Appendix, D). The information gleaned from the questionnaire should be incorporated into Trident and any resulting change should be documented on the review abstract.<sup>6</sup> Staff receiving claimant information during this period should:

- 1) Scan the materials.
- 2) Combine the materials with the review abstract PDF located in the appropriate basin data folder. Do this using the organize pages function in Adobe Acrobat Pro. Any supplemental material added to the PDF should go *after* the review abstract.
- 3) Send the physical form to records management to include with the paper claim file. Indicate that the material has already been scanned, so records does not create a duplicate.

### Information Received After Reexamination is Complete

During summary prep and the 60-day claimant contact period, DNRC can still adjust elements of the claim *that are within the scope of reexamination*. However, a specialist making changes at this time could disrupt the summary report process.

Information received during summary review should immediately be forwarded to the Post-Exam Supervisor (Summary Team Lead). Document any changes at this stage according to the Post-Exam Supervisor's instructions. At this stage, the review PDFs are still undergoing revision. So, specialists receiving information should, in cooperation with the Post-Exam Supervisor:

- 1) Scan the materials.
- 2) Combine the materials with the review abstract PDF located in the appropriate basin data folder. Do this using the organize pages function in Adobe Acrobat Pro. Any supplemental material added to the PDF should go *after* the review abstract.
- 3) Send the physical form to records management to include with the paper claim file. Indicate that the material has already been scanned, so records does not create a duplicate.

### Information Received During Summary Review

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<sup>6</sup> You can only modify the Reservoir Record, Means of diversion, POD, and Source name. Otherwise, you cannot modify/replace an element, unless a DNRC error occurred, or you have approval from the Program Manager.

At this stage, DNRC will be working with the Water Masters to conduct a review of the summary report before it is formally sent to the Water Court. At this stage, DNRC has a more limited ability to help claimants. A specialist should not make any changes at this time, unless specifically instructed to do so.

Immediately scan and forward the materials received to the Basin Lead, who is communicating with the Water Master. They will work with the Water Master to determine the best course of action. Ask the Basin Lead if the materials will be incorporated into the summary PDF, or if the materials should be added to the digital file independently.

- ◆ If the Basin Lead says the material will be integrated into the summary PDF (they may have you do this), send the original copy to records management and indicate that the material has already been scanned.
- ◆ If the Basin Lead instructs you to add the material to the digital file independently, scan the materials, and use the naming convention listed below to title the scan.
  - ◆ ADJUDICATION UPDATE^STATEMENT OF CLAIM^41B^2473^00^^.pdf Add the correctly named PDF into your office's digital records folder to be uploaded.
  - ◆ Send the original copy to records management to be added to the physical file and indicate the file has already been scanned.

#### Information Received After Decree Issuance

At this point, the department no longer has the authority to help claimants resolve outstanding issues with their claim. Claimants should be advised to contact the Water Court; from there the Water Court will work with the claimant. If a claimant submits an **amendment or a request to withdraw a claim**, immediately forward the documents to the Water Court via email ([watercourt@mt.gov](mailto:watercourt@mt.gov)) for processing. Copy the Program Manager on the email. From there, the Water Court will work with the claimants. If a claimant submits other **information or documentation** such as a questionnaire, immediately scan and send to the claim file. Send the original documents to records management.

#### RECEIVING AMENDMENTS

If a claimant wishes to amend their claim, they may do so by submitting a written amendment. The DNRC has an Amendment to Statement of Claim form available for claimants to use, but any written form is acceptable. An amendment in any form must be signed by *all* owners of record to be processed. If there are discrepancies between the ownership record and current property ownership, a Water Right Ownership Update (form 608) should be completed to clarify the record.

The department's ability to process amendments depends heavily on where a water right is in the decree process. **The department can only process amendments that have not been issued in a decree of any form.** This includes split and implied claims that have been generated from a right that was issued in a decree.

Water rights that have not been included in a decree are: SB355 claims, HB110 claims, *some* split claims, *some* implied claims, and *some* late claims. If you receive an amendment to one of these claims, date stamp the amendment then process the amendment according to the procedures outlined in Chapter 11, Special Provisions, of the Claims Examination Manual.

If a claimant submits an amendment to a statement of claim that *has* been included in a decree (any claim undergoing reexamination), follow the procedures outlined below.

#### Amendments Received During Reexamination

Given the prior decreed status of reexamination claims, DRNC’s options on what to do are limited. The department primarily utilizes issue remarks to bring the amendment to the Water Court’s attention. There are 4 amendment remarks: A29, A24, A21, and A23.

A29	A24	A21	A23
Use if amending elements other than POU.	Use if amending POU.	Use if amendment form has not been signed by all owners.	Use this if you modified any element based on information submitted with the amendment form.

When amendments are received, stamp the form with the date received, add the appropriate amendment issue remarks to the reexam versions as detailed below, and enter the date received into the date field of the amendment remarks. **All amendments will receive at least one of the issue remarks shown below to notify the court regarding unprocessed changes contained in the amendment.**

Use the A24 and A29 issue remarks together if the claimant submits an amendment to the place of use and other elements at the same time.

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**A29** AN AMENDMENT WAS SUBMITTED ON MM/DD/YYYY REQUESTING TO AMEND THE PERIOD OF DIVERSION. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

**A24** AN AMENDMENT WAS SUBMITTED ON MM/DD/YYYY REQUESTING TO AMEND THE PLACE OF USE. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED BY THE COURT AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

---

If an amendment has not been signed by all owners of record, add the following issue remark.

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**A21** AN AMENDMENT WAS SUBMITTED ON MM/DD/YYYY, REQUESTING TO AMEND THE POINT OF DIVERSION. THE AMENDMENT HAS NOT BEEN IMPLEMENTED AS IT HAS NOT BEEN SIGNED BY ALL OWNERS OF DNRC RECORD.

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If a claimant wishes to amend one of the following elements, DNRC *may* be able to make modifications to the statement of claim that are still within the scope of reexamination<sup>7</sup>:

- ◆ Source Name
- ◆ Point of Diversion
- ◆ Means of Diversion
- ◆ Ditch Name

The department has the ability correct the *Source Name, Point of Diversion, Means of Diversion, or Ditch Name* by rule, based on information included in an amendment. Review the amendment for accuracy prior to making changes. Flag the element or elements as *Modified by Rule* in Trident, add or retain the P88 issue remark (see Point of Diversion Index procedures), and add the following additional issue remark to the claim. **Only do this when:**

- ◆ Your analysis agrees with the amendment. i.e., the amendment is 100% correct.
- ◆ The amendment is only amending the elements listed above.

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**A23** AN AMENDMENT WAS SUBMITTED ON MM/DD/YYYY REQUESTING TO AMEND THE POINT OF DIVERSION. THE AMENDMENT WAS NOT PROCESSED AS THIS ELEMENT WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS.

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This is *not the same* as implementing the amendment; this is making corrections within the scope of reexamination based on information that the claimant provided in the form of an amendment. This is a small but important distinction. Always document any changes and added remarks on the review abstract PDF. Date-stamp the amendment form (Appendix, E), scan and attach the amendment to the review PDF and send the original to records management.

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<sup>7</sup> Unless the elements are Water Court Modified, Keep or Sustained.

## Amendments Received During the Department's Summary Preparation and 60-day Contact Period

While the summary report is being generated, DNRC can still adjust elements of the claim *that are still within the scope of reexamination*. However, a specialist making changes at this time could disrupt the summary report process. So, coordination and communication with your Team Lead during this time is crucial.

Amendments received during summary review should immediately be date-stamped and forwarded to your Team Lead. They will coordinate with the summary review team to make and document changes within the summary process.

## Amendments Received During Summary Review

At this point, the department has limited authority to help claimants resolve outstanding issues. A specialist at this stage *cannot implement any changes*.

Information received during this phase should be date-stamped and immediately be sent electronically to the Basin Lead. The Basin Lead will communicate with the Water Master on the best way to proceed. The Water Master may decide to make changes at this stage, or they may set up a case for the post-decree process. Send the original information to records management.

## Amendments Received After Decree Issuance

Once the decree is issued, the department no longer has legal authority over the claims; the procedures above do not apply. Claimants wishing to amend a claim at this point should be informed<sup>8</sup> that they may either:

- ◆ File an objection during the proper objection period.
  - ◆ This is the Water Court's preferred option. Timely objections will be consolidated into cases that will settle outstanding issues prior to the issuance of the Final Decree.
- ◆ File a *verified motion to amend* with the Water Court.
  - ◆ A verified motion to amend is the Water Court's version of our amendment form and has its own restrictions and requirements.

A claimant should be advised to contact the Water Court to accomplish these processes. If a claimant submits an amendment *to DNRC* during this time, date-stamp the amendment, scan and send the amendment to the Water Court via email ([watercourt@mt.gov](mailto:watercourt@mt.gov)) *immediately*. The email should explain that the amendment was received after the issuance of the decree and the DNRC does not have the authority to process it. Because of this, the amendment has been forwarded to the Water Court for processing. Send the original to records management for

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<sup>8</sup> **Inform** a claimant of their options. Do not advise one option over another. You may help a claimant prepare any of these materials, however you should only be doing what they are asking of you. It is easy to start sharing your opinions during this process, do not. The department can provide technical help and explain information; it **does not** have the authority to impart anything that could be construed as legal advice.

scanning. Make sure the Summary Report Team Lead is kept in the loop. **The Team Lead is the only person who should be corresponding with the Water Court regarding any follow-up questions.**

#### Receiving Requests to Withdraw Statement of Claim / Interest in a Statement of Claim

For various reasons, a claimant may wish to withdraw their interest in a statement of claim or withdraw the statement of claim altogether. Withdrawals of Statements of Claim in reexamination basins require court approval because of the decreed status of these claims. Therefore, the claimant should be instructed to complete the Water Court's withdrawal form (Appendix, H) and submit it directly to the Water Court themselves.

If a claimant submits a request to withdraw to DNRC during this time, immediately make a copy of the withdrawal form. Date-stamp the form then scan and send the form to the Water Court via email ([watercourt@mt.gov](mailto:watercourt@mt.gov)) *immediately*. The email should explain that the request was received after the issuance of the decree and the DNRC does not have the authority to process it. Because of this, the request has been forwarded to the Water Court for processing. The Water Court will work with the claimant from there. Send the original to records management for scanning. Make sure the Summary Team Lead is kept in the loop. **The Team Lead is the only person who should be corresponding with the Water Court regarding any follow-up questions.**

If a claimant wishes to reinstate a previously withdrawn claim, instruct the claimant to contact the Water Court. Reinstating a claim falls solely within the purview of the Water Court; the department has no role in the reinstatement process.

#### SCANNING AND RECORDS

- ◆ All reexamination Review Abstracts, claimant contact letters, and claimant contact responses need to be digitized and uploaded to FileNet.
- ◆ Any late claims that are going through full examination need to follow the file routing and records procedures found in the Examination Manual.
- ◆ Once reexamination has been completed by the Reexamination Team, the Team Lead will notify the Post Examination and Distribution Supervisor. Completion of reexamination requires that Review Abstracts are complete and in the correct basin file (MMBDATA/ADJUDICATION/BASIN DATA/BASIN CODE).
- ◆ At this point, the Post Examination and Distribution Program will complete quality control checks for summary report preparation. Upon completion of the checks and any associated corrections, the claimant contact letters will be sent by the Post Examination and Distribution Program.
- ◆ Next, the Post Examination and Distribution Program will apply the proper naming convention (found below) to the Review Abstract .pdf documents and transfer them to the appropriate file folder (WRB\_ADJ\_Helena) so that the Records unit can upload them to FileNet. The folder can be found on the PDFSCAN\_PROD drive. The draft summary

report cannot be sent to the Water Court until all examined claims have been completed and scanned documents have been sent to Records for uploading to FileNet.

- ◆ The Records unit will continue to scan and upload claimant contact letters to FileNet due to how they are run in batches.
- ◆ Claimant contact will be handled by the Reexamination Team assigned to the basin. Once claimant contact is completed for a claim, the Adjudication Specialists handling claimant contact will compile all claimant contact materials, including any claimant response and amendments into a single .pdf file for each right and transfer it to the Claimant Contact folder located within the appropriate basin folder (MMBDATA/ADJUDICATION/BASIN DATA/BASIN CODE/CLAIMANT CONTACT). The Adjudication Specialist will then need to notify the Post Examination and Distribution Program that the file has been added and is ready for coding in the database. The Post Examination and Distribution Program will then make any necessary changes to the reexamination version of the water right based on the claimant contact materials. The Post Examination and Distribution Program will apply the proper naming convention (found below) to the claimant contact files and transfer them to the appropriate folder (WRB\_ADJ\_Helena) for uploading to FileNet.
- ◆ The Adjudication Specialist is responsible for ensuring that all documents have been scanned and were scanned correctly. Any paper documents produced between claim examination and completion of the claimant contact period will be routed to records to be included in the paper file. Records will not need to scan any of the materials since they are being scanned by the specialist.

### File naming for upload to FileNet

Name the compiled .pdf document with the **exact** naming convention as shown below in the example:

- ◆ **The ^^ are not place holders, they are called “ticks” and need to be typed in as they are shown in the examples. (Shift 6 on the keyboard).**
- ◆ If extension exists:
  - Water Right type^basin^water right number^extension^^.pdf
- ◆ If extension does not exist:
  - Water Right type^basin^water right number^^.pdf
- ◆ Examples of how the naming convention should look:
  - ADJUDICATION UPDATE^STATEMENT OF CLAIM^41B^2473^00^^.pdf
  - ADJUDICATION UPDATE^STATEMENT OF CLAIM ^41B^30156136^^.pdf
- ◆ Once the .pdf document has been named, transfer it to the WRB\_ADJ\_Helena folder for Records so that they can upload it to FileNet. This folder can be found on the PDFSCAN\_PROD drive. Instructions for mapping the drive can be found at the bottom of this document.

- ◆ The draft summary report cannot be sent to the Water Court until all reexamined claims have been completed and scanned documents have been sent to Records for uploading to FileNet.

#### Mapping the PDFSCAN\_PROD drive for file uploading

Contact your immediate supervisor if you do not have a drive for file uploading.

#### Your Copier/Scanner

- ◆ Things you need to know about your Copier (Appendix A):
  - ◆ It must scan 300 dpi or better.
  - ◆ You must know how to email scanned documents to yourself from the copier.
  - ◆ You must know how to lighten or darken a document on the photo copier.
- ◆ Scan Protocol (all of this can be programmed on your printer):
  - ◆ Scan documents on photocopier (300-600 dpi preferred). 600 dpi may make file too large to email.
  - ◆ Scan single sided if document is single sided. If it is two-sided, make sure you scan two-sided. You can preset your program to scan two-sided and delete the blank pages in Adobe. You can include mixed sizes. That does not affect the quality of the scanned documentation.
  - ◆ If there is a specific order to scan, make sure you follow it
  - ◆ Scan in color only.
- ◆ QC documents and Scan product.
  - ◆ Orient the pages as they should appear. Save updated copy if adjusted.
  - ◆ Check for correct water right number, correct basin, clarity, no social security numbers, no bank account information, no Realty Transfer Certificate information. Typically, this includes the purchase price, seller, buyer, etc.
  - ◆ Remove all blank pages from the scanned document using Adobe.

# V. LITIGATED REMARKS INDEX

## OVERVIEW

The 2012 Reexamination Order specified that the proposed standards identified in the DNRC proposal shall not apply to any element of a claim that has already been litigated by the Water Court. Any element of a claim that appeared on the objection list shall be considered litigated and shall not be subject to modification based on implementation of the DNRC proposal. Any element of a claim that is marked by an asterisk (added by the Water Court) has also been litigated and shall not be subject to modification based on the DNRC proposal.

Litigated elements are any element of a claim that appeared on the objection list of a previous decree and any element of a claim that has a Water Court origin in TRIDENT. In a perfect world, these two will match, but the order directs us to review both. Remarks are not expressly addressed in the order but are held to the same standard because they were “litigated” as well.

The purpose of this index is to identify all litigated elements and remarks. We will create a spreadsheet tabulating the findings and use the findings to scrub all litigated elements from the other reexamination indexes. Doing it this way will save staff time because they will not have to research litigated elements and remarks as part of every single index moving forward.

The *only* way to identify litigated remarks is to read the masters report of each water right with at least one litigated element. We are working off the presumption that litigated elements are a prerequisite and/or result of Water Court cases and all litigated remarks were added as part of those Water Court cases. Relatively speaking, elements are much easier to identify. Remarks do not have origin details and would not have existed when the objection lists were created.

- ◆ For example: If a remark was put on a water right during the DNRCs initial examination, and that water right went through a Water Court case which resulted in a master’s report, and the masters report specified the issue remark should remain on the water right, that remark is now a litigated remark, and can’t be touched.

Master reports are often found in the scanned documents of a water right but not all the time. In cases where the master report is not in the scanned file, it might be available on Full Court. If it is not available there, we may need to request a copy from the court.

This index must be completed first, before any other index. If a remark has been flagged as litigated, it cannot be touched at all.

## PROCEDURE

- 1) You will begin with an almost blank excel sheet, only the top line will have data, with the columns being labeled “Water Right #”, “Litigated Elements”, “Litigated Remarks”, and “Additional Comments”.



IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER CLARK FORK DIVISION  
SOUTH END OF THE BITTERROOT RIVER SUBBASIN (76HE)

IN THE MATTER OF THE ADJUDICATION ) CASE 76HE-84  
OF THE EXISTING RIGHTS TO THE USE ) 76H-W-024848-00  
OF ALL THE WATER, BOTH SURFACE AND ) 76H-W-133461-00  
UNDERGROUND, WITHIN THE SOUTH END )  
SUBBASIN OF THE BITTERROOT RIVER )  
DRAINAGE AREA, INCLUDING ALL )  
TRIBUTARIES OF THE SOUTH END )  
SUBBASIN OF THE BITTERROOT RIVER )  
IN RAVALLI COUNTY, MONTANA )

CLAIMANT: Flo E. Johnson, Eloise G. Doyle, John J. Twite and Helena M. Twite,  
Edward F. Kratofil and Stella M. Kratofil, Thomas L. Dunbar and  
Margaret E. Dunbar, Center Investment, Inc., James W. Blankenship and  
Elaine M. Blankenship, Larry Stuth, Rory E. Laws and Mary C. Laws,  
Darrell J. Twite, Michael G. Morris and Lois J. Morris, Wellington F.  
Roemer and Joean E. Roemer (former owners) Cesare Carbone and Judy  
Carbone (present owners)

OBJECTOR: Daly Ditches Irrigation District  
Washington Water Power Company, Montana Power Company,  
United States of America (Bureau of Indian Affairs)  
Guido Oberdorfer

MASTER'S REPORT

FINDINGS OF FACT

1. Claims 76H-W-024848-00 and 76H-W-133461-00 were filed by Margaret E. Dunbar and Thomas L. Dunbar as supplemental rights for irrigation uses of certain waters of Christisen Creek.
2. During routine examination of these two claims, the Montana Department of Natural Resources and Conservation (DNRC) added remarks to the claim abstracts raising questions as to flow rate, place of use, acreage, and abandonment.

- 6) A Master's Report should contain "Findings of Fact" and "Conclusions of Law". One of these two sections will contain the information you are looking for. Not all master's reports are the same, some may have the info you're looking for in the "Findings of Fact" while others will have the info in "Conclusions of Law." And some master's reports will have the info spread across both sections.

Below is an example of language found in the "Conclusions of Law" section of a master's report.

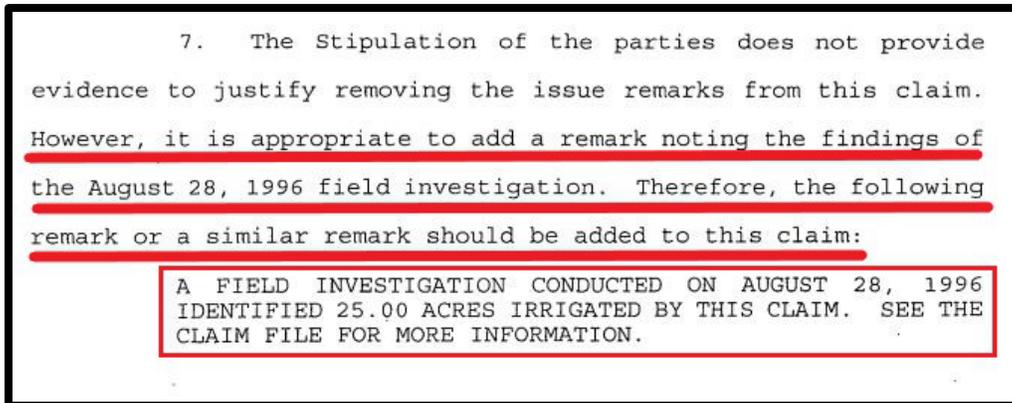
VI

As to both claims, there is no additional evidence in the record concerning the issue remarks. An independent review of any unresolved issue by the Court on its own motion, if warranted, will be delayed until a later date. The flow rate, acreage, place of use, and abandonment issue remarks will remain on the abstracts of both claims until the next decree stage. See Memorandum on Order Denying Motions to Dismiss, Water Court Case No. WC-92-3 (February 8, 1995).

DATED this 23<sup>rd</sup> day of December, 1997.

Edward M. Dobson  
Edward M. Dobson  
Water Master

Below is an example of language found in the “Findings of Fact” section of a master’s report.



Read the master’s report carefully. Litigated remarks include:

- ◆ Remarks directly added in a master’s report.
- ◆ Remarks explicitly and implicitly kept.
- ◆ Remarks included in proceedings.

Even if a remark says something along the lines of “remove after the preliminary decree issuance”, consider it a litigated remark. DNRC will not remove those remarks, the Water Court will during its proceedings.

Besides the Master’s Reports, a valuable source to see what changes the Water Court has made is the As Modified by Water Court Abstract. In most cases, this abstract will be located very close in the scanned docs to the Master’s Report. These abstracts will have asterisks next to elements that were litigated by the Water Court during proceedings. They may also contain handwritten notes by the Water Master specifying which changes should be made.

**ABSTRACT OF WATER RIGHT CLAIM  
AS MODIFIED BY THE WATER COURT**  
**CLARK FORK RIVER ABOVE BLACKFOOT RIVER**  
**Basin 76G**

76G-58

**IMPORTANT NOTICE**

**AN ASTERISK (\*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY ORDER OF THE MONTANA WATER COURT AFTER ISSUANCE OF THE PREVIOUS DECREE**

**Water Right Number** 76G 5857-00 STATEMENT OF CLAIM  
**Version** 3 -- POST DECREE  
**Status** ACTIVE

**Owners** SADIE M JOHNSON  
4511 HWY 48  
ANACONDA, MT 59711

**Priority Date** MAY 1 1877  
**Enforceable Priority Date** MAY 1 1877

**Type of Historical Right** DECREED

**Purpose (use)** IRRIGATION

**Irrigation Type** MULTIPLE METHODS

**\*Flow Rate** 4 67 CFS

**\*Volume** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE

**Climatic Area** 4 - MODERATELY LOW

**Maximum Acres** 157 00

**Source** WARM SPRINGS CREEK

**Source Type** SURFACE WATER

**Point of Diversion and Means of Diversion**

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SWSW	23	5N	10W	DEER LODGE
<b>Diversion Means</b>	HEADGATE					
2		SESESW	23	5N	10W	DEER LODGE
<b>Diversion Means</b>	PUMP/HEADGATE W/DITCH OR PIPELINE					
3		SWSE	23	5N	10W	DEER LODGE
<b>Diversion Means</b>	HEADGATE					
4		NESE	23	5N	10W	DEER LODGE
<b>Diversion Means</b>	PUMP/HEADGATE W/DITCH OR PIPELINE					

**Period of Use** APRIL 1 to NOVEMBER 4

3rd Remarks

*[Signature]*  
3-28-05

Some water rights may be split, or implied claims generated by the Water Court. In these cases, *read all court documents very carefully*. Most remarks associated with these claims will be considered litigated unless they were added by DNRC *after* the case took place.

- ◆ For example, standards may have been applied and a period of diversion remark was added by DNRC after the court proceedings.
- ◆ Some master's reports will include a proposed abstract. These abstracts are useful in determining which remarks were added by the court, and which remarks were added by DNRC later.

**Note on Split and Implied Claims**

Pursuant to Rule 35(a)(b), W.R.C.E.R. the Water Court has the authority to generate implied claims based on information submitted with another water right. Implied claims are generated at the request of the claimants in situations where more than one right was originally claimed on one form. Since implied claims are generated and authorized by the water court, **all elements and remarks** on an implied claim are considered litigated<sup>9</sup>.

Implied claims generated by the Water Court are indicated by C5 remarks.

---

C5 THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 76X 1234-00.

---

Pursuant to Rule 26 W.R.C.E.R., the Water Court has the authority to split statements of claim. This generates a new split claim (child right). If a claim has been split by the Water Court, **all elements and remarks** on both the parent and child rights are considered to be litigated. Split claims generated by the Water Court are denoted by C4 remarks.

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C4 THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 76X 1234-00.

---

Always double check the scanned documents if you aren't sure who generated a split or implied claim. During the course of your review, add issue remarks rather than modifying elements or changing/removing remarks on split/implied claims that were authorized or generated by the Water Court.

#### IDENTIFYING AND FIXING ISSUES:

During this index, you will find issues that need to be fixed before this index is considered complete. When you are finished looking in the scanned documents, make sure that Trident matches your findings. The following list is not comprehensive. Use common sense and keep an eye out for other issues that may arise. Look out for the following issues:

#### Missing Litigated Remarks

If you see that a litigated remark that is missing, add the remark back with the exact language and formatting. A common example of this are supplemental right remarks added by the Water Court. These remarks were removed when the information was translated into the

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<sup>9</sup> Unless the implied claim was generated by the DNRC. There was only a short period where DNRC could generate implied claims; they will be denoted by a C7 remark. Treat these like any other claim in reexamination since they were not specially authorized by the Water Court.

related-rights tab. In this scenario, add the supplemental remark and leave the relationship in the related-rights tab.

Document the restoration of a litigated remark on the review abstract.

**Do not** restore a litigated remark if the remark was removed by the Water Court in later litigation. **Do not** restore “Bean Lake” remarks on fish and wildlife claims; the Water Court has instructed DNRC to remove all these remarks, regardless of litigated status. See Remarks chapter for more detail.

### Incorrect Origins

All litigated elements should have an element origin in TRIDENT that is either “sustained, modified by Water Court, or keep”. If you notice a litigated element that does not have one of the origins above, make sure the element is what was set during the most recent case and change the origin to “**sustained**”.

### Misapplied Standards

There are instances where standards were applied when they should not have been. If the flow rate or volume were litigated, make sure that those elements remain as they were litigated. If standards were applied, restore the element to what it should be and make sure the origin is “sustained”. Document as needed.

### V40/V145 Applied to Litigated Volume

If the volume is litigated, V40 or V145 remarks are not to be applied. If one of these remarks was added by standards or by another specialist and the volume is litigated, remove the V40/V145. Document as needed.

### Remark Language Changed

If a remark’s language or a flow rate/volume description has changed, restore it to what was litigated. Document as needed.

# VI. CTIN REMARKS INDEX

## OVERVIEW

The purpose of CTIN remarks is to track Change Authorization changes for implementation in the Final Decree. The CTIN Remarks Index is to ensure statements of claim do not reflect Change Authorization's updates to the point of diversion, place of use, purpose, or place of storage on a water right unless these changes are already decreed<sup>10</sup>.

A Change Authorization indicates a post-June 30, 1973 change to a water right and can potentially affect all elements on the water right including the point of diversion, place of use, purpose, flow rate, and place of storage. Although a claim may have been changed, the Water Court will only decree the *original* version of the water right.

This index is to check for changes that have been incorporated into the *reexam* version of a statement of claim. This index will query all change authorization information remarks to see what elements have been changed. In this index of change authorizations, you will encounter 3 scenarios.

The CTIN index should be scrubbed of all litigated CTIN remarks by the Team Leads before they are distributed to specialists. Litigated CTIN remarks are not subject to this guidance.

## PROCESSING THE INDEX

To determine if authorized changes were included in a decree, it is necessary to compare the **Temp. Prelim. Decree abstract**, the **reexam review abstract**, and **change authorization documents**. Take note of any differences between the two abstracts and look through the scanned documents to determine if the claim falls in one of the following categories:

Category 1: Changes were authorized by the department but are NOT reflected in the decreed version of the claim.

- ◆ Add the following remark:

---

CT1: THIS WATER RIGHT WAS SUBJECT TO A CHANGE APPLICATION APPROVED BY THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION. THE MONTANA WATER COURT DID NOT INCLUDE THE CHANGES APPROVED BY THE DEPARTMENT IN THE DECREE OF THIS WATER RIGHT.

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<sup>10</sup> §85-2-402, MCA

Category 2: Changes were authorized by the department and were reflected in the decree version of the claim.

- ◆ This means the changes were already incorporated into the decree.
- ◆ Add the following remark:

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CT2: THIS WATER RIGHT WAS SUBJECT TO A CHANGE APPLICATION APPROVED BY THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION. THE MONTANA WATER COURT INCLUDED SOME OR ALL OF THE CHANGES APPROVED BY THE DEPARTMENT IN THE DECREE OF THIS WATER RIGHT.

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Category 3: Changes authorized by the department that are NOT reflected in the decreed version but ARE reflected in the reexamination version.

- ◆ This scenario is the least likely of the three.
- ◆ This means that an error occurred in the generation of the reexam version of the water right.
- ◆ To remedy this error, revert any authorized changes back to how they were decreed or set as the result of litigation (modified by Water Court, Sustained, or marked Keep).
- ◆ Review the scanned documents *carefully* to determine if an error occurred that needs to be fixed, or if the Water Court modified an element similar to a change.
- ◆ After fixing any DNRC error, add the same remark as Category 1:

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CT1: THIS WATER RIGHT WAS SUBJECT TO A CHANGE APPLICATION APPROVED BY THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION. THE MONTANA WATER COURT DID NOT INCLUDE THE CHANGES APPROVED BY THE DEPARTMENT IN THE DECREE OF THIS WATER RIGHT.

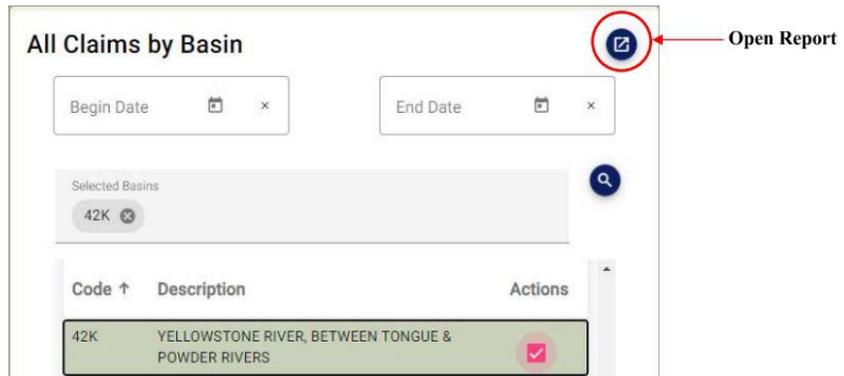
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The request for the remarks index will be made by your adjudication supervisor. Or the Team Lead will pull the remarks index after notifying the adjudication supervisor. Your Team Lead will then prep it and deliver it to you.

Steps to Pull Remarks Index from Trident

- ◆ Open Trident, navigate to the tab Adj/Water Court, click drop down menu.
- ◆ Select, Examinations, then select ADJ Basin Remarks (Report).
- ◆ In the ADJ Basin Remarks (Report) table, under code select the basin # and then check the box.
- ◆ Open Report, click the square icon up in the upper right corner of the ADJ Basin Remarks (Report).

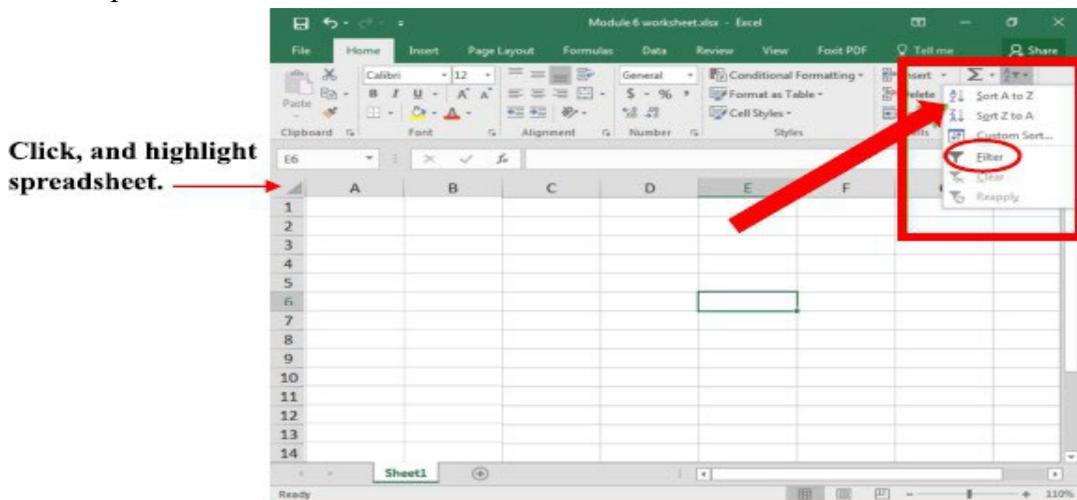


- ◆ Open the Excel.

Steps to Set-up the Remarks Index

Once this process is complete that will generate an Excel spreadsheet with all the remarks for the basin. The Team Lead will prep it and deliver it to you. That process will include:

- ◆ To add a filter to the spreadsheet
  - Highlight the spreadsheet. To apply a filter, select the Sort & Filter and under the drop down menu select Filter. The process will apply a filter to each column of the spreadsheet.



Once this designation is made to the spreadsheet, filter and sort the following columns Water Right Status, Version, and Remark Code.

- ◆ On the column Water Right Status, use the drop down arrow to remove dismissed and withdrawn claims.
- ◆ On the column Version, use the drop down arrow to filter the version type.
  - Keep all the reexamined versions that includes Reexamined 2 Active and Reexamined 3 Active.
  - Remove the following non-reexamined versions: Change Authorization 2 Active, Original Right 1 Active, and Post Decree 2 Active.
- ◆ On the column Remark Code, highlight the column, select the Sort & Filter, and select Sort A to Z.
- ◆ On the column Remark Code, use the drop down arrow to filter the remark codes.
  - Note: If there are remark codes that will be reviewed during reexamination of other indexes or do not require reexamination then eliminate these unnecessary remarks.
- ◆ Remove these remark codes: CGI, CTIN, E6, G35, II, P161, P162, P166, P88, TR1Z, V55, V95, VMIZ issue remarks, and other unnecessary volume remark codes.
- ◆ On the spreadsheet, add a column for Comments.

### REMARKS TO LOOK OUT FOR

Begin by checking each remark in the spreadsheet. Look out for the following remarks:

- ◆ T10, T15 & T20: These are Interbasin Transfer Remarks which are to be replaced with IBT1, IBT2 & IBT3 remarks respectively.
- ◆ OWIS: Use O55, O56, or O60 for part of the place of use, in place of the OWIS remark.
- ◆ RX1Z: Remove RX1Z remarks. (Remark Language: “This is an “R” type reservoir”).
- ◆ ST1Z, SN1Z or DM1Z: If there is an information remark which says only “Spring” or “Waste and Seepage”, remove the remark. It’s considered a redundant remark. Even if “Spring” or “Waste and Seepage” is not the minor type of the POD, remove the remark.
- ◆ “Bean Lake” Remarks: P721 or similar remarks questioning the validity of fish & wildlife claims. Always removed these remarks, **even if they are litigated**.
- ◆ G35 & GIIS w/ SIMILAR LANGUAGE:

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**G35 THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41X  
DECREE ISSUED MM/DD/YYYY.**

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The G35 remark is only for split and implied claims which were not included in the previous decree of that basin<sup>12</sup>. When you encounter this remark, you should verify that the claim is indeed a split or implied claim. You can do this by checking for one of the following remarks on the claim in TRIDENT; “C4/C5/C7/R17/R18”. If one of these remarks is there, we

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<sup>12</sup> G35 remarks are specified to be an information remark. See the 4/26/2011 Order on Split Claim Remarks. (Appendix L)

know it's a split or implied claim. If you encounter a G35 remark, and in TRIDENT also see an "L7" remark this should be a red flag. L7 is a late claim remark and can mean the claim was not included in the previous decree. However, late claims which are not included in the previous decree should receive a "GIIS" remark.

When you encounter a GIIS remark with similar language to the G35 above, you do the same process as described above but reversed. You will expect to see an L7 remark, if present you should check formatting and move on. If you encounter one of "C4/C5/C7/R17/R18" it should indicate a G35 belongs instead of a GIIS. If neither an L7 nor C4/C5/C7/R17/R18 is present you will need to go into the scanned documents to determine why the remark was added. If you are able to determine why it was added, you should also add the L7 or C4/C5/C7/R17/R18 remark depending on how it was generated. If you cannot determine why the remark was added, contact your Team Lead.

- ◆ P725, P724 & P721 Remarks and Similar Language

When you encounter one of these remarks in your index, you will delete the remark, even if the remark is litigated. Document the change you made on the PDF.

- ◆ E5/E6 Remarks

Ignore these remarks. These remarks are for SB355 and HB110 claims and are not relevant to reexamination. These should typically have been scrubbed from your index by your Team Lead.

# VIII. POD, MOD, SOURCE, DITCH INDEX

## OVERVIEW

The Water Court’s Reexamination Order dated December 14, 2012, orders the DNRC to standardize and identify the point of diversion, source, and ditch name. The means of diversion will also be standardized for water distribution purposes. Standardizing these elements eliminates confusion among water users and assists in the future enforcement of a water rights decree.

This index is to determine the Point of Diversion (POD), source name, means of diversion (MOD), ditch name, reservoir record (limited scope). process is not black and white, there are gray areas that require you to use deduction and reason to make a determination. Be prepared to use lots of reasoning skills and make decisions backed up by the rules. Just when you get a rule, the rule will be broken, but know which rule is governing each decision and note that on the PDF; always.

Note that in this index, there are “sub-groups” that are also examined. The main group of water rights will consist of the re-examined version statement of claim. There are also reserve rights, compact rights, and large irrigation districts that may show up in a subset. These will be listed as “Reserve”, “Compact” or “Irrigation District” rather than “Statement of Claim” in the WR\_TYPE field of the attribute table. Other subgroups may have original versions could be Implied Claims, Late Claim Bs and Severs, pending decree status. However, all water rights will have the status of active, as found in the WR\_STATUS column of the attribute table with one exception, severed which are noted as “SEVR”. **Each of these must be noted as they are governed by different exam rules.** Reserve, Compact, and Irrigation Districts are noted but not examined. We do not examine or reexamine irrigation district claims<sup>13</sup>. Another group to be aware of are claims that are in a distribution project.

Re-examination of the POD, source, ditch name, MOD, and reservoir record allows us to correctly identify the water right as verifiable and to assist the evaluation of several other indexes and as a precursor to Distribution Projects. Anytime you cannot find a POD (or clarify any element within the scope of this review), add an issue remark. All water rights need a location where they divert the water, a source, and a means of diversion but not all water rights will have a ditch or reservoir.

Method

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*13 Only use the documentation in the scanned folder to examine the irrigation district Statements of Claim.*

- ◆ This index is done through GIS and Trident work. This is a visual check of:
  - ◆ Is the POD in the correct location by legal land description?
  - ◆ Is the POD on the correct source, is this the claimed source name?
  - ◆ Is the ditch named and what is the legal land description of the ditch's diversion?
  - ◆ Is there a reservoir? If so, is the MOD a Dam? Off-stream reservoirs can have several different MODs while onstream reservoirs must have only a "dam".
  - ◆ Does the MOD make sense and method is an allowable one? The MOD is only allowed to be one initial means. We no longer list things like "headgate or pump with ditch/pipeline". MOD that says flowing or other should be refined. Is flowing for a ditch that livestock are drinking from? Then see if there is a headgate. Is other a bucket? Refine to bucket.
  - ◆ If it's a livestock direct claim, does the POU area encompass the POD?

### BEFORE YOU START

In Trident, **do not sort points of diversion or places of use on reexamination claims so that existing remarks which reference these elements will remain correct!** You have to have permission to do this. However, you may or may not know if you have these permissions. If you have them and add PODs to the system, the system will offer you a manual sort option by TRS or SEQ. If you do not have permissions, sort buttons will be inactive for you.

Know when to apply the information remark P88. Use the full element titles in the remark variable. For example, type the words Point of Diversion instead of POD or just the word diversion.

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P88 SOURCE NAME, POINT OF DIVERSION, MEANS OF DIVERSION, DITCH NAME, RESERVOIR RECORD, AND PLACE OF USE WAS/WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

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- 1) Know when you use issue remarks: element is Sustained, Keep, Modified by Water Court; it is an implied claim or a severed claim.
- 2) Know when you need information remarks like a S30, CX30, D10, etc.
- 3) See remarks codes sheet in TRIDENT for all remarks.

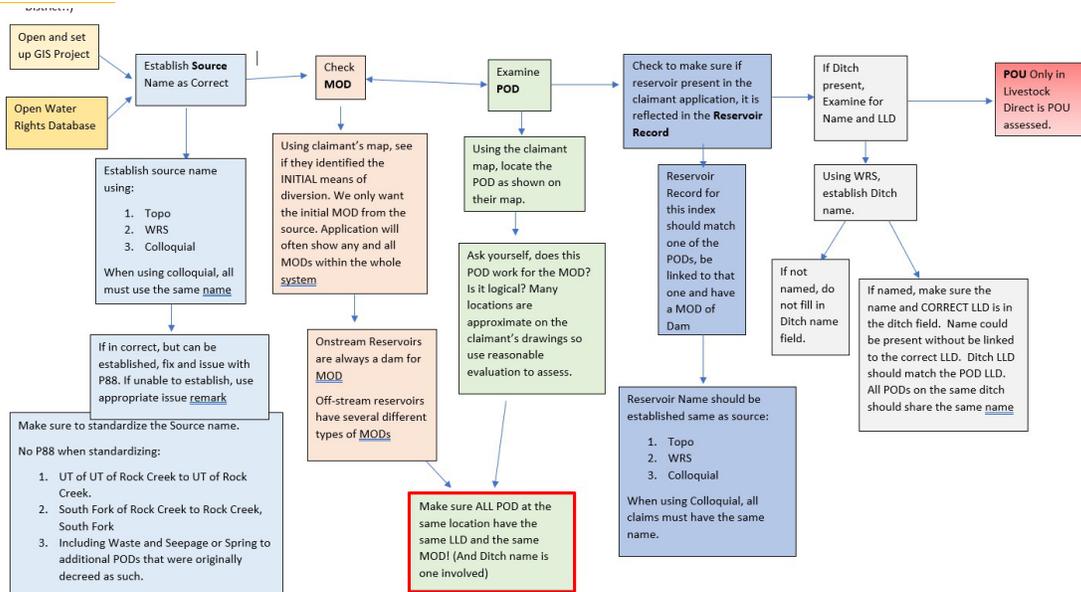
- 4) Know how to identify implied claims.
- 5) NEVER, EVER forget documenting on the PDF!

## SETTING UP YOUR GIS PROJECT

For complete visuals, see the Picture-Book at the end of this section.

- 1) Navigate to the appropriate basin folder and open the GIS project. The project will have been pre-built for the examiners.
- 2) Using the “File” tab and the “Save As” option, save this project to your desktop or local drive, location of your choice. I recommend titling it in a way you know you are always on your copy, not the original copy on the share drive. ArcGIS Pro should automatically show you are now in your copy.
- 3) Using “Add Data” ribbon button, navigate to the MMBData file of original geoTrident. Often this link is already established, and you can just click Trident and open that to see the files. Load your subset.
- 4) You may move the fields around in the attribute table, but you **do not ever hide them!** This causes major issues with the end merging of the data back to one final feature class.
- 5) All necessary layers for re-exam should already be in the project but you may find you will have to do outside research using Earth Explorer, Google Earth, USGS Historical Topo Maps, etc. (links available at the end of this document.) (I like to use Google Earth because it has elevation data.)
- 6) A personal preference through symbology can be used once you mark at least one POD complete. You can color code PODs that are not marked as complete and those that are complete for a visual referencing tool.

## PROCESS



Keep in mind that the process for examining each statement of claim's POD varies by the **type of right, the decree status of the right, and any litigated elements**. Read each section below, carefully

### Begin Reexamination

- 1) Choose a POD and navigate to that location. As you learn to re-exam, you will find methods that work for you. Some examiners prefer to work on one source at a time, some may prefer to do certain MOD at a time. Each water right will need to be examined. I do recommend anytime you have one location with multiple PODs from various water rights, you work that location, doing each water right in its entirety. For example, 15 water rights are on one location but each of those 15 water rights has 1-5 PODs each. Start with the first water right, do all 4 of its PODs. Then return to the location that has the 15 altogether. This way you will keep consistent POD LLD, MOD, and ditch name if one is present.
- 2) Open that water right in Trident.
- 3) Before any changes are made, check to see if the review abstract has been downloaded and if not, download the abstract to the basin folder/review abstracts on the MMBDATA drive (See documentation process for clear direction on saving abstracts).
- 4) Note whether this is an irrigation or a stock claim.
- 5) Determine if the water right (WR) has any additional PODs and highlight all by the WR#, look for any missing ones that might have been put in another subset, check against Trident.
- 6) Determine if it is a re-exam and statement of claim, severed claim, implied claim, late claim B or irrigation district as these have different rules governing each.
- 7) ALWAYS remember if any other WR#s PODs share the same location since they must all have the same means of diversion, source and LLD, as well as ditch name if one is involved.

As this process has many components, each component will now be discussed in detail.

### SOURCE NAME

Part of the POD project is to standardize and make sure the source names are correct. You will have several options to help you determine a source name. First option is to use the Topo names and having the basin flowline on without the names will display source lines on the topo more clearly. You can turn on the NHD flowline source names by right clicking on the layer in the table of contents and selecting "label". This layer is typically in the project as "BasinX\_Flowline" and has been clipped to show only the water inside the basin you are working in BUT be very aware these names may not match the topo source names due to recent changes on the USGS naming conventions. Use the topo names as the NHD names have been shown to be inconsistent.

Always remember the hierarchy of source name:

- 1) Current Topo
- 2) WRS
- 3) Colloquial

## Examining Source

- 1) Check the claimant scanned file and make sure their map shows the same source as the topo. If it does not...
- 2) Highlight all PODs on the source and see if they are all claiming the same name as the claimant, noting USGS has changed several names of sources over the last few years.
- 3) If all the claims have a different name from the topo, and may or may not agree with each other, track down where the name came from...was it an old name for the source as shown by the WRS or historical topo research. This website is found (<https://livingatlas.arcgis.com/topoexplorer/index.html> or you can google USGS Historical Topo Maps). If they all have the same name but it is not shown on the Topo or the WRS, a colloquial ruling could be used. The end result, regardless of how the name is derived, is the same; all claims on a source must have the same name.
- 4) When dealing with springs, waste and seepage, or a manmade pit, a natural pit, or subirrigation; see page 216 of the Claim Examination Manual. These are now entered into the Minor Type field box in Trident. When you do this, make sure to remove any of the historical remarks that note this. For example, you now have both a "Spring" in the Minor Type field under Source in Trident and a ST1Z or SN info remark. You can remove the remark. Note that the remark was removed on the abstract as redundant information once you confirm it is in the minor type field in Trident.
- 5) Any changes to the source are reflected on decreed claims using the P88 remark.  
Exceptions: Do not use the P88 remark in the following situations:
  - a) If the POD elements are litigated. In this case, only add issue remarks like a SNIS, S105, S126 or appropriate issue remark; see pg. 213 of the Examination manual.
  - b) On Irrigation District governed by a Z right no change, no issue remark. The irrigation districts will have paperwork in the claim files that direct you back to a water right with a "Z", something like Z-48106 and will usually have the words "Irrigation District". See pg. 464 for definition of Z right of the Claim Manual.
  - c) You simply are adding spring to minor type to additional PODs that was caused by Trident migration and was decreed in the earlier decree as a spring.
  - d) You standardized the name from Unnamed Tributary of Unnamed Tributary of (Blank) Creek to Unnamed Tributary of (Blank) Creek.
  - e) You standardized the name from South Fork of (Blank) Creek to Blank Creek, South Fork.  
\*In cases b, c and d, you are not changing the name but are standardizing and no P88 should exist. If in these cases, the water right is Modified by Water Court, Sustained, Implied or Severed and you are NOT changing the source but standardizing, you should make the change!

- 6) Livestock Direct can claim unnamed tributaries and a named tributary as long they are the same drainage. An S15 is added as an information remark.
- 7) Document any and all changes on the Review Abstract PDF.
- 8) Note your changes in GIS comments field.

### Remember

The spelling and the spaces should be identical for PODs on the same source (i.e., LaValle Creek vs La Valle Creek or another would be Lozo Creek vs Lozeau Creek).

### MEANS OF DIVERSION

The reexamination order does not directly include means of diversion in the five elements of re-exam and will only be changed to provide clarification to the claim for water distribution, or in relation to corrections to source, points of diversion and ditch names. Claims sharing a diversion structure (multiple use claims or claims from the same named ditch) should all have consistent means of diversion.

Some things to consider in examining the MOD: Look at the claimant's claimed MOD and see if it is feasible.

- 1) Only one MOD is acceptable so in cases where it says "Headgate/Pump with ditch and/or pipeline", this is not an acceptable means of diversion. This must be isolated into the initial means of diversion. A good source is the claimant's map, they will often list the MOD on the map. Or does the Notice of Appropriation, Decree Notice, or Affidavit say the diversion type? Was it on an objection form later in the claim file and inadvertently missed on the Red Marked Abstract? If it's a data entry error sometimes we can fix it.
  - a) Let's say the above situation proves to be a headgate on a pipeline as shown on the claimant's map, POD element field is "Decreed" and available to be modified by rule. We would change the MOD to headgate, add P88 for Means of Diversion (you do have to spell it out), and because pipeline might be unique to this claim, we would add a D10 for the pipeline.
  - b) Let's say the above situation shows that during spring run-off they use a headgate on a ditch but then as the year progresses, switch to a pump with a pipeline. We would change the MOD to headgate, add P88 for Means of Diversion (you do have to spell it out), but use a D15 to note they also use a pump, ditch, and pipeline.
- 2) Another scenario could be a system that has a livestock direct on it during high flow, but during lower flow, they fence off the cattle to avoid riparian damage and use a pipeline and a stock tank or many stock tanks. Making sure the claim file reflects this type of use pattern, you could have livestock direct for a MOD, add P88 for Means of Diversion (you do have to spell it out), and a D15 with pump and pipeline.
- 3) Other MODs that should be updated are "flowing" if not on a spring or well as these have different rules. Sometimes this one cannot be updated, especially in domestic claims and can be left but every attempt to determine the system should be attempted. Or another MOD that should be refined is "Other". Again, look for any clues in the claimant's file.

- 4) When you have multiple PODs at one location, they should all have the same MOD!
  - a) Example would be several irrigation claims show headgate, but the stock claims show ditch. All stock claims should also show headgate if there is one employed. Keep in mind the old verification process may have eliminated a ditch in favor of Livestock Direct or used ditch instead of headgate. The correct method is to note headgate as this allows distribution to note all users of a ditch.

A situation where same POD same MOD might not apply would be a spring where the stock is listed as livestock direct but the domestic claims a pipeline from the spring and has a different POU.

- 5) When you do NOT use a P88:
  - a) Modifying Livestock Direct from Source on Wildlife claims to Wildlife Direct from source.
- 6) Any changes to the water rights are documented on the PDF, include what substantiated the change such as “MOD updated due to information on claimant’s scanned file map” and note the change in brief in the GIS project as well. In GIS, you might just write, “MOD changed” under comments.
- 7) Add the following issue remark to claims where the means of diversion cannot be identified:

---

D50 THE CLAIMED MEANS OF DIVERSION CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

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This process is a lot of back and forth between aerials, Trident and GIS and claimant’s scanned file. Note you will be working in all of them together. MOD and POD require a bit of back and forth as you must establish the area of the POD to verify the MOD, but you can’t always establish or refine the POD without knowing the MOD. So be flexible!

### POINT OF DIVERSION

During point of diversion re-exam, the goal is to specify to the nearest  $\frac{1}{4}$ ,  $\frac{1}{4}$ ,  $\frac{1}{4}$  or govt lot, if applicable to the diversion type, for the most concise legal description. A point specific diversion is a diversion that originates at a specific location, such as a headgate, pump, dike, dam, or pit, etc. A concise legal description is a description that breaks the number of quarter sections down to the most precise location.

For point specific descriptions, the most precise description will typically be refined to three quarter sections. For non-specific diversions, such as livestock direct from source or fish and wildlife claims, the number of quarter sections may be fewer or even whole sections.

Caution should be exercised when making changes to points of diversion legal land descriptions of claims that are located greater than a  $\frac{1}{4}$ ,  $\frac{1}{4}$ ,  $\frac{1}{4}$ , a section away from the diversion or conveyance identified on the current aerial photo. The point of diversion for a claim in Trident

needs to represent the location of the claimed diversion as it was claimed, prior to 1973. Document where you can see drastic or large differences in the claimed point of diversion and the current point of diversion, as this may help the Distribution Team after decree issuance. This may point out where a change authorization was necessary but never filed.

The Specialist should use their knowledge and evidence gathered about basin trends, what is going on with other claims in the drainage for clues. If available, check an older photo source (water resources survey photos or 1978-1982 or online at <https://earthexplorer.usgs.gov/>) to confirm the diversion identified on the current air photo. Are there a lot of newer subdivisions or center pivots on the current aerial photos compared to the historical photos? Does the point of diversion match the claimed map? Care should be taken before identification of a possible post 1973 claim. Please add issue remarks if you see this instance occurring in a basin and make the Team Lead aware so that they can work with New Appropriations staff to rectify these and get change authorizations recorded.

If older photography is unavailable or inconclusive, or review of drainage trends point to a post 1973 change in the point of diversion, an issue remark could be added. Keep in mind, if the LLD described by the claimant is visible on current aerials as described when no historical aerials are available, it is acceptable to deem the location correct. Only in areas of significant change would warrant an issue remark.

The following are a couple of examples. A PDIS free-text issue may also be used.

---

P40 THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE SWSWSW SEC 36 TWP 99N RGE 99W MONTANA COUNTY.

P49 THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE WELL CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

---

Some things to keep in mind.

- 1) More accurate mapping has allowed for more precise LLD so don't be afraid to look around the area and refine or modify as needed – but make sure to double check any refinements or modifications for accuracy!
- 2) We are to use historical aerials as much as possible, but these have built in issues as they have been 'stretched' or rubberized to match the public land survey system of townships and sections. Pay close attention to any marks on the aerial which indicates a section corner. Also look for landmarks like trees or consistent bends in the stream that show current aerial and historical aerial are close. (Also, there will be areas where there will not be any historical aerials. Look in the Read Only

Trident connections: imagery: WRS: Raw photos for each County for unrectified photos in your area.)

- 3) For claims that use a ditch, trace that ditch as close to the water as possible. Keep in mind a historical ditch may now be a pipeline so look for hints like pipe laying around. If you are used to using GIS, you might take a clip of the basin ditches and make your own shapefile of the WRS ditches to edit instead of drawing them in or tracing them.
- 4) In water rights that use a pump, look for areas that allow for creek access but keep in mind many pumps are able to be driven close on a four-wheeler and carried closer. Pump sizes can often be quickly googled to see how big they actually are which will help you know how it could be delivered to the water. Also, remnants of old ditches may indicate location of a pump as pipeline may now be in the old ditch, so look for pipeline.
- 5) Livestock will have trails going to tanks and water gaps.
- 6) The means of diversion will play a role in determining if the point of diversion will need to be refined.
  - a) Livestock Direct are always bound by water and can claim a full section but may be refined as needed.
  - b) Pumps are generally three quarters but may be broader with an information remark that states they are moveable within the LLD.
  - c) For static pumps, the map in the claim file is a good reference. If the location seems reasonable, move the point to that location and refine if necessary. There's no need to place a P49 remark on a pump POD if the location seems reasonable – however, if there is no map then the location can't be determined.
  - d) Instream claims can be very broad as they are bound by water. This description is usually available in the claim file & their maps are very clear. Be on the look-out for any of these claims that could be Murphy Rights. See Claim Manual pg. 546 for definition. We do not modify Murphy Rights. Also watch out for streambed migration. They may have claimed a section corner that no longer appears to have the stream; however, close examination may reveal the streambed has moved but the old channel is still present. I will allow that section to stay in the claim because the stream may move back and that is how it was pre-1973.
  - e) Waste and Seepage and Subirrigation claims can be broad unless there is a specific point of where it leaves the source.
  - f) Most other claims should be refined to 3 quarters where at all possible.

Once the correct location of the point of diversion is identified in the ArcGIS Pro project, it is essential that each point is “snapped” (placed in the same location) onto the previous point if another exists on the location. This is a function in ArcGIS Pro that is typically a default setting.

WHEN TO MOVE THE POD IN GIS NOW THAT YOU HAVE FOUND IT: (see picture book for how to perform in GIS)

1. The exact location of some PODs can be identified. For example, when you can see the ditch leaving the source, move the POD dot to that location even if you are not changing the LLD. Do not leave on the centroid. This applies for Modified by Water Court and Sustained claims as well as Decreed status.
2. If broad areas are claimed, leave on the centroid. An exception here would be a livestock direct claim for the entire section and no refinement is necessary but there are two or more other sources that are throughout the section. Move the POD closer to the claimed source.
3. If the claim is Modified by Water Court or has been sustained and you are issuing a P40 or PDIS for correction, move the POD to that location and remember to cite the why with photo or quad numbers, on the PDF, so this is easy to resolve in Post Decree Assistance.

### SPECIAL CASE POD'S

#### Wells and Springs

The standard for wells and springs is three quarter sections. The physical locations of wells and springs do not need to be scrutinized. The legal descriptions of diversions from wells and springs will be checked to ensure that they possess three quarter sections. Also, **the court has prohibited the DNRC from making changes to all spring points of diversion, means of diversion, and source type; except to refine the legal description to the 1/4, 1/4, 1/4.**

NOTE: If the POD on spring or well is **not refined to 3 quarters** and you are able to refine it, you may also address the Source, MOD, ditch name and reservoir. **However, if it is 3 quarters**, no other elements are able to be addressed.

#### Secondary POD's

Secondary POD's are specific to situations where a **natural carrier** is utilized. Secondary POD's are **not** subject to reexamination; they were not included in any Water Court Order. Since they are not regulated in the same way as primary POD's, the modification or addition of secondary POD's can be confusing.

**Do not add or modify any secondary POD's.**

### SUSTAINED & WATER COURT MODIFIED POD'S

Litigated elements will be flagged in TRIDENT (in the element's origin) and in the litigated remarks index. **Do not** change the origin of litigated elements, even if the origin says "decreed" instead of "modified by Water Court".

Occasionally, points of diversion in the project need points of diversion legal descriptions modified but are “Sustained” or “Modified by Water Court” in the point of diversion element origin in Trident. Elements with “Sustained”, “Keep” or “Modified by Water Court” by origins cannot and should not be edited in Trident (for staff with higher Trident editing permissions).

Issue remarks only can be used. Probably the most common remark for the POD in this situation will be the P40 or a PDIS but others can and will be used according to the situation.

### SPLIT, IMPLIED, & SEVERED CLAIMS

**The points of diversion for split, implied (that have not undergone a previous decree as these are created through Water Court), and severed claims should not be edited in Trident.** However, the point of diversion centroids for split and implied claims should be moved to the correct location in the POD project. If a point of diversion for a split, implied, or severed claim is incorrect, use issue remarks to indicate the change that should occur. NOTE: Often you will not find implied to have been “Modified by Water Court”. Or you may find a claim file that has the handwritten words “IMPLIED” across the first page of the application. To know if they are truly implied, check the decreed abstracts on the DNRC website for that basin. If the claim was included in the previous decree, the implied claim may be examined according to the re-exam rules as a claim because it is not actually an implied claim. If it is a true implied claim, the claim will not have been decreed and only can receive issue remarks.

### DISTRIBUTION POD’S

Distribution PODs need to be noted and carefully looked at. **It is advised to seek the guidance of the distribution team when entering these waters.** Many of these claims have already been through Water Court and will not require issue remarks. To find out if a water right is in a distribution project, on the original version in Trident, is the area of “Enforcement” when you expand the POD field for each POD ID.

If this field is populated, pay attention to any notes from the original examiners. In cases where the water right origin is decreed and able to be modified by rule, these notes may indicate there was a discrepancy on the LLD at the time of original examination. Compare what the examiner noted and what the claimant claimed with the current location in the distribution project. It has been this examiner’s experience that in many cases this discrepancy noted actually corresponds to the current location and the original claim application was simply in error due to inability to locate precisely on their map. A simple P88 is then used to rectify the claim. In cases of Modified by Water Court, I recommend open discussion as how to proceed if a discrepancy between the WC ruling and the pre-1973 location.

As of 11/7/2023, the following Preliminary Decrees will have distribution water in them: 43BJ and 76HB. Keep in mind that distribution projects are always being added and check with the Distribution team and the Distribution map on the DNRC website to make sure you are up to date. As a courtesy, the builder of the GIS project may flag distribution waters but don’t always depend on that. If they are not flagged, notify your Team Lead.

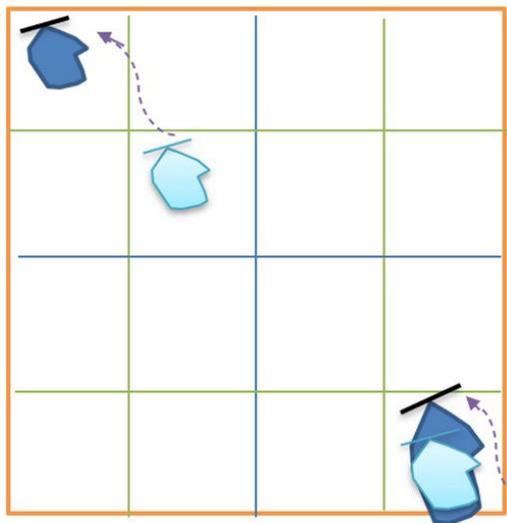
## RESERVOIR RECORDS

When the point of diversion of an on-stream reservoir is modified, change the legal description of the reservoir record as well. Change the element origin in Trident to Rule, Modified By. Include Reservoir Record was/were in the P88 remark variable.

- 1) Reservoir records are only addressed in this index in terms of the LLD description, applying any names that are used, and putting any info remarks on the claim should the Reservoir be greater than the POD LLD.
- 2) Reservoir's LLD should be the same as the POD LLD that corresponds.
- 3) The POD ID number should also be linked to the Reservoir Record.

### Modifying Legal Land Description

- 1) When refining the location of dams, choose the spot where the stream crosses the dam.
- 2) The location of a POD should align with the dam location, not necessarily most of the reservoir, if it is a big one.
- 3) Whenever you are modifying a POD (dam/pit) with an onstream reservoir, modify the POD and reservoir record so their legal land descriptions match. If the reservoir is for stock water usage, the Place of Use also needs to be checked. If the Place of Use does not at least contain the location of the reservoir, add a PLIS remark.
  - 4) For large dams that extend into multiple  $\frac{1}{4}$  sections, add an R35 or R40 and indicate where the reservoir extends.



**Example in NW quarter:** Modify the POD and Reservoir Record from NWSEW to NWNWNW. Check POU to make sure it covers the area that the reservoir has been moved to (ex: NWNW); if POU does not cover the area that contains the reservoir, add PLIS.

**Example in SE quarter:** No modification should be needed.

### Extra/Unnecessary PODs on the same Dam (on the same Water Right)

If multiple PODs for the same claim are located on the same dam, there are 2 different actions that can be taken:

- 1) In most cases, the extra POD(s) can be deleted, with “Modified by Rule” put on the POD that is left. It does matter which POD gets deleted. The POD number

(PODV\_NO) deleted from the GIS attribute table needs to correspond to the POD number deleted from the POD tab in Trident. R35 or R40 remarks also get added to indicate where the dam extends. Describe what was done on the PDF (Review Abstract).

- 2) In some cases, if the scanned documents indicate that livestock are drinking directly from the reservoir, the second POD on the dam can be retained, with Means of Diversion changed from “Dam” to “Livestock Direct.” These instances don’t happen often.

#### Dam vs. Pit

- ◆ A pit is usually dug beside a source but can also be instream.
- ◆ If there is a berm within a channel that clearly makes it a dam (rather than a dug-out pit), change means of diversion from pit to dam, or vice versa, dam to pit if there is no dam visible on the aerial photos.

#### ONSTREAM VS. OFF-STREAM RESERVOIR

- ◆ Off-stream dams/pits have a ditch or conveyance channel from the source. Usually, they will have a headgate, ditch, or pipeline for a MOD on the creek that is their point of diversion. The offstream reservoir will be in a location that does not align with the POD.
- ◆ Onstream dams/pits capture runoff or flow from a flowing defined or dispersed channel. On claims with onstream reservoirs, the POD location and reservoir record (& Reservoir ID no.) should match in Trident. MOD is always a dam.

#### Reservoir with Stock and Irrigation Claims

- ◆ Can you have a HEADGATE (for irrigation) coming out of a reservoir that has DAM (for stock)? Look carefully at the claim file and in cases where there is no indication of claiming the stored water, yes. There must be no evidence of the stored water in the application or on the claimant’s map. If the stored water is being claimed, then No. In this case, the means of diversion for the irrigation claim needs to be standardized from HEADGATE to DAM, since the DAM is the initial means of diversion that makes the headgate feasible.
- ◆ Can a dam (for stock) and a diversion dam (for irrigation) coexist? Unlikely but possible if one is not claiming the stored water but diverting stream water. Scrutinize the claim file carefully to assess the real MOD for this type of diversion.
- ◆ Can you have both a dike and a dam in the same spot? It seems as if a stock claim will have a dam, but an irrigation claim will call the same thing a diversion dam or dike...The means of diversion may be able to be standardized across the multiple PODs that are in the same location.

#### Unable to Locate Reservoir

If you cannot find a dam or pit, use R100 issue remark. (Do not use P49). If an R100 is applied to a claim, make sure the P168 or P162 is changed back to P161 & P164 and:

- ◆ Period of Diversion is changed back to Decreed.
- ◆ Make sure reservoir estimate has not been added to the Reservoir tab in Trident.
- ◆ Remove any R56 and P88 indicating a modification of the reservoir record.

### Correcting Means of Diversion from Livestock Direct to Dam

If changing a means of diversion from Livestock Direct from Source to Dam (because a dam is claimed or is evident on claim map and stored water is claimed), make sure to remove the P164 from the claim and replace with the appropriate remark (P162 or P168) and add a reservoir record. When adding a reservoir, check to see if estimations have already been done for this reservoir and add those numbers to the appropriate fields in Trident. If the estimation has not been completed, you may have to perform that task. If you have not performed this before, seek out the person who is doing the Reservoir Index for assistance.

- ◆ P162 goes on a claim if they claim a reservoir less than or equal to 15 AF.
- ◆ P168 goes on a claim if they claim a reservoir greater than 15 AF.

### DITCH NAME AND DITCH LLD

Ditch names are ruled by the WRS in almost every circumstance. There are very few ditch names on the topo, but the hierarchy for ditch names:

- 1) Water Court ruled name (check all claims to make sure the Water Court has not applied a name)
- 2) Topo map as found in ArcGIS Pro, USA topos, rare to find them here.
- 3) WRS
- 4) Colloquial.

The ditch is often on the claim form and found on the first page of the application. Claimants typically will use Item #3 of the application correctly but some will write the name where this example is highlighted as well:

Home Phone No. 549-8074 Business Phone No. Same

3. Name of ditch, creek or river Deep Creek Logean Mntain

Use:  Irrigation

4. Method of Irrigation Use:  Sprinkler  Furrow  Flood

5. Source of Water:

Stream (1) Name Deep Creek Tributary of \_\_\_\_\_

Spring

Well

Lake (2) Name SPRING CREEK Stream \_\_\_\_\_

Tributary of Deep Creek at Logean Mntain

Reservoir Name \_\_\_\_\_ Stream \_\_\_\_\_

Tributary of \_\_\_\_\_

6. Point of Diversion: County Mineral (in US-Forest Service land)

SW 1/4 SW 1/4 NE 1/4, Section 34, T 16 N, R 25 W

7. Means of Diversion:

Pump Capacity \_\_\_\_\_ gpm

Headgate and ditch or pipe

Flood and dike

8. Means of Conveyance:

Ditch

Pipeline

Other Explain \_\_\_\_\_

*There is a well in NE 1/4 of Section 34 with a pipeline w/ electric pump 3 hp (+ sprinkler)*

*I believe the "ditch" puts water in this well??*

A second location to always check is claimant's map. Many claimants will use a photocopy of the WRS and circle their ditch name.

### Adding a Ditch to Trident

- 1) Add the Ditch Name to the Ditch Name field in the Attribute Table (for future reference, and whomever does a check of the final PODs)
  - a) Add the Ditch Name to that POD in Trident and make the POD Origin "Modified By Rule".
  - b) The ditch may first need to be created in the Ditch code table, with the name and correct legal land description.
- 2) In Trident, expand the POD that you want to work with and click the pencil.
- 3) To check the ditch LLD or to add a ditch, click the pencil next to Diversion/Ditch Name field
- 4) Enter ditch name only on claims that are POD Origin "decreed" and use a P88.



- 5) For Water Court Modified and Sustained claims, add the ditch name and add a P88 remark to annotate the ditch name was modified (This process is for when there is no existing diversion/ditch name in a sustained POD tab).
- 6) Add a CX remark as applicable if a ditch name was specifically litigated or attached to a litigated POD, and do not change the name assigned. Add a CX30 remark when there are multiple ditch names to be identified.
- 7) For instances where the ditch name has been identified for an issue remarked POD utilize this verbiage for the CXIS remarks:

**Claim with single POD:** PENDING RESOLUTION OF THE POINT OF DIVERSION ISSUE, THE DITCH NAME MAY BE [DITCH NAME HERE].

**Claim with multiple PODs:** PENDING RESOLUTION OF THE POINT OF DIVERSION ISSUE, THE DITCH NAME LOCATED IN THE [LEGAL LAND DESCRIPTION HERE] MAY BE [DITCH NAME HERE].

- 8) Ditch head-gates should have 3 Quarter sections in legal land description.

You will now have the option to Search Ditches or Create Ditches. Always search to make sure the ditch you want is NOT already in the system. You will need to pay close attention to the ditch name as well as the LLD for each ditch. It is recommended to always search a ditch by using the % to ensure you get all potential ditches under the name you are searching.

---

Search for Ditches

Create a Ditch

1 Search

2 Pick a Ditch

Diversion/Ditch Name
x

BROWN%

Search

✓

✗

---

Once you execute the search, scroll through all ditches to see if any match your LLD. If so, highlight and click the blue button with the check mark at the bottom right.



If the ditch does not exist, you will click “Create A Ditch” and fill out all fields required. Ditch Characteristics does not get filled in. Only Ditch Name, Ditch Type and the Legal Land Description.

When adding a Ditch Name to a POD, make sure the Ditch has the same legal land description as the POD.

If a P40 has been applied to a claim because the POD location needs correction but has been “Modified by Water Court”, the ditch location will not match the existing location of the POD. That is okay. In this case, the ditch location will match where the POD should be (where the P40 identifies as the POD location).

In GIS, if multiple PODs (including PODs from different water rights) use the same headgate, the GIS point for each of those PODs should be snapped to the same location (the same headgate), so that the exact same XYs get generated for each POD that uses that same headgate. Use the same ditch name too!

Add the ditch to your attribute table in GIS POD layer under the field DitchNameAdded. Do NOT use DITCH\_NAME, this is the historical field from Trident. Denote that the name was added in the comments as well (you can simply say Ditch added). Some water rights may already have ditch names that were added during an enforcement action. Check to make sure that the

enforcement ditch name and the legal description matches the labeled ditch in the ditch layer. Check with the Distribution Team Leader before changing a distribution ditch name.

There will be times it is necessary to move a ditch within the ditch layer or edit the ditch. See using GIS picture book for how to perform this.

### IMPORTANT REMINDERS

- ◆ For points of diversion associated with ditches, ensure that all points of diversion for a common ditch have the same legal description.
- ◆ Overlay the Water Resources Survey Ditch shapefile with the points of diversion layer and move centroids for ditches to the head of the ditch or canal.
- ◆ Compare the location of the ditch as shown on the ditch shapefile with the photo available in ArcGIS Pro. The photos are typically more accurate than the ditch shapefile.
- ◆ Identify any needed point of diversion corrections in the comments field of the diversion shapefile.

### PLACE OF USE

Place of Use can be corrected only in very specific circumstances. If and only if a livestock direct claim requires an adjustment to the legal land description for its POD, then the POU can be adjusted to match. If no adjustment is made to the POD, the POU is not available to be adjusted using the P88. However, the POU can be issued with a PLIS. If the POD was the SENENE and the POU was N2NE and the POD is found to be in the NENENE, no adjustment to the POU would be required as both the NENENE and SENENE are within the POU description of the N2NE.

During the review of the point of diversion element, you will encounter claims that have matching points of diversion and places of use that are both in the same location and are incorrect. Correcting the point of diversion leaves the place of use in the wrong location. There are two resolutions to this issue depending on the scenario:

- 1) The use of water is for Livestock Direct from Source or Wildlife Direct from Source:
  - a) When the Point of Diversion has been modified by rule, correct the place of use legal land description to match the point of diversion and add Place of Use to the P88 remark.
- 2) The use of water is not for Livestock Direct from Source or Wildlife Direct from Source:
  - b) Add a free text place of use (code PLIS in Trident) issue remark. This is common for reservoirs needing legal land description corrections for the point of diversion; the following is an example:

---

PLIS THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION. THE

CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE THE NENWNW SEC 34 TWP 8N RGE 27E MUSSELSHELL COUNTY.

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FINAL REMINDERS

- 1) Look at the remarks on the claim while working in each water right. Be sure the issue remarks are still valid, and the descriptive remarks are correct or needed. For example, if there is a remark saying the ditch name is Squirrel Ditch and Squirrel Ditch is in the POD tab, this remark can be removed as it is repetitive.
- 2) DO NOT change or hide the fields in the attribute tables. All needed fields should be present and no changing is necessary. When the table is saved with hidden fields they cannot be unhidden and they don't merge back together well!
- 3) Be sure to document on the PDF abstract what and why something was changed, by whom and when it was changed. Years from now, this can save a lot of time and confusion as to why something was changed. Remember this PDF is the examination worksheet in reexamination.
- 4) For an example of a documented review abstract PDF, see the document titled: "Examples of Specific POD Scenarios"
- 5) When a ditch is added to the POD tab, be sure to choose the ditch from the list of values with the correct legal description. If it is not in the list of values, it will have to be added and check with a supervisor on how to add the ditch name properly to Trident, so it shows up in the list of values.
- 6) Remember to check before the project is started to see if there are claims in the basin that are in a distribution project as shown previously. It is important to review the comments that were added in the project for the source, point of diversion, means of diversion and ditches. These may or may not be valid and can be earmarked for review to see if they need to be removed during the summary review process.

HELPFUL LINKS FOR RESEARCH:

- ◆ National Inventory of Dams
  - ◆ [National Inventory of Dams \(army.mil\)](https://www.army.mil/nid/)
- ◆ Montana LIDAR
  - ◆ <https://montana.maps.arcgis.com/apps/MapSeries/index.html?appid=55cc886ec7d2416d85beca68d05686f4>
- ◆ Historical Topos:
  - ◆ <https://livingatlas.arcgis.com/topoexplorer/index.html>
- ◆ Earth Explorer with historical photos
  - ◆ <https://earthexplorer.usgs.gov/>
- ◆ GWIC for wells
  - ◆ <https://mbmgwic.mtech.edu/>

- ◆ On your machine, you should have Google Earth
- ◆ BLM GLO maps
  - ◆ [https://glorerecords.blm.gov/details/survey/default.aspx?dm\\_id=126431&sid=spwbp42c.4qt#surveyDetailsTabIndex=1](https://glorerecords.blm.gov/details/survey/default.aspx?dm_id=126431&sid=spwbp42c.4qt#surveyDetailsTabIndex=1)
- ◆ If you have to check previously decreed rights, scroll to the basin number, open using the basin name, bottom of the page
  - ◆ <https://dnrc.mt.gov/Water-Resources/Water-Rights/Adjudication>
- ◆ WRS:
  - ◆ <https://dnrc.mt.gov/Water-Resources/Water-Rights/Understanding-Water-Rights/Water-Resource-Survey-Books>

# IX. POD, SOURCE, & DITCH GIS PICTURE BOOK

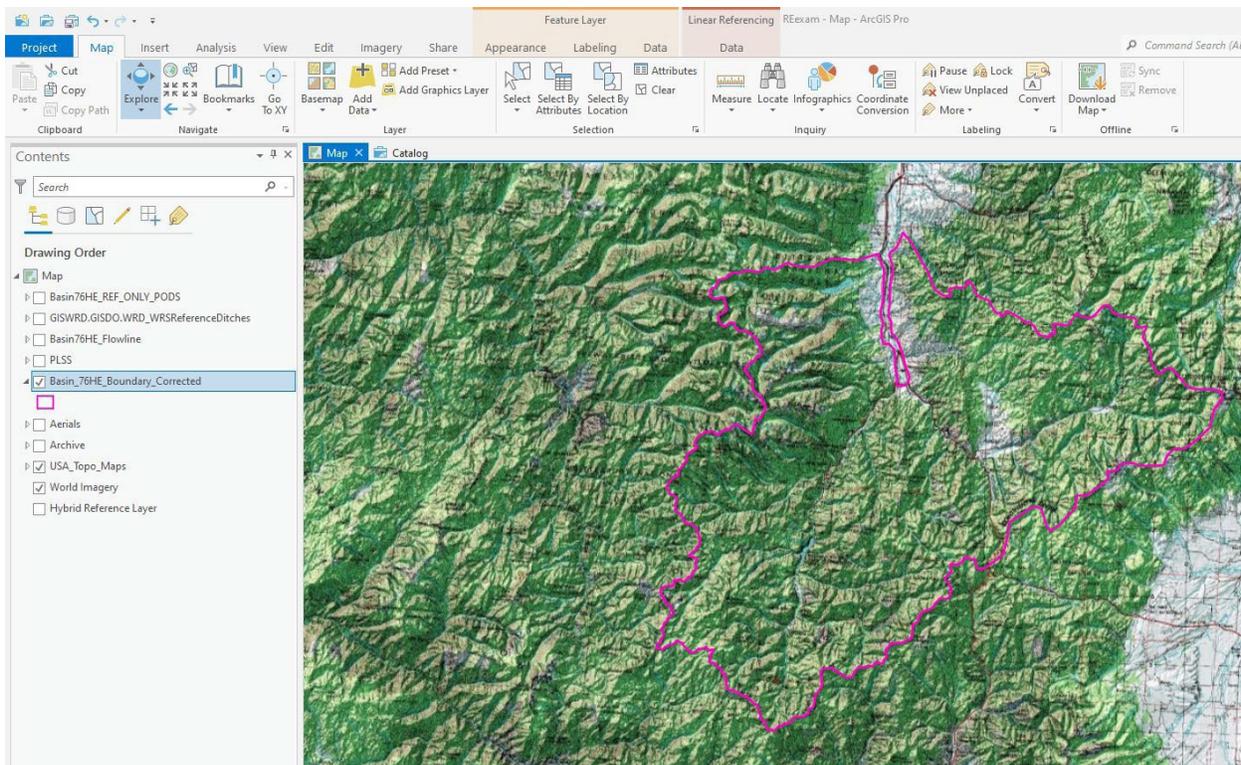
This is to show different steps and what to expect as you go through re-examination of the POD, Source, and Ditch Name Index and how to perform some of those steps.

When you first get your assignment, the POD project as it is called should be in the Basin Folder on the Share Drive, MMBDATA (<\\dnrhl2382>)\ADJUDICATION\Basin Data.

You will navigate to the basin folder and open the GIS folder within the Basin Folder. Inside this folder is the Basin\_XX\_Reexam. It is within this folder you will find your GIS project. (i.e., G:\ADJUDICATION\Basin Data\76HE\GIS\Basin\_76HE\_Reexam). These projects always have an extension of .aprx

Open this project by double clicking.

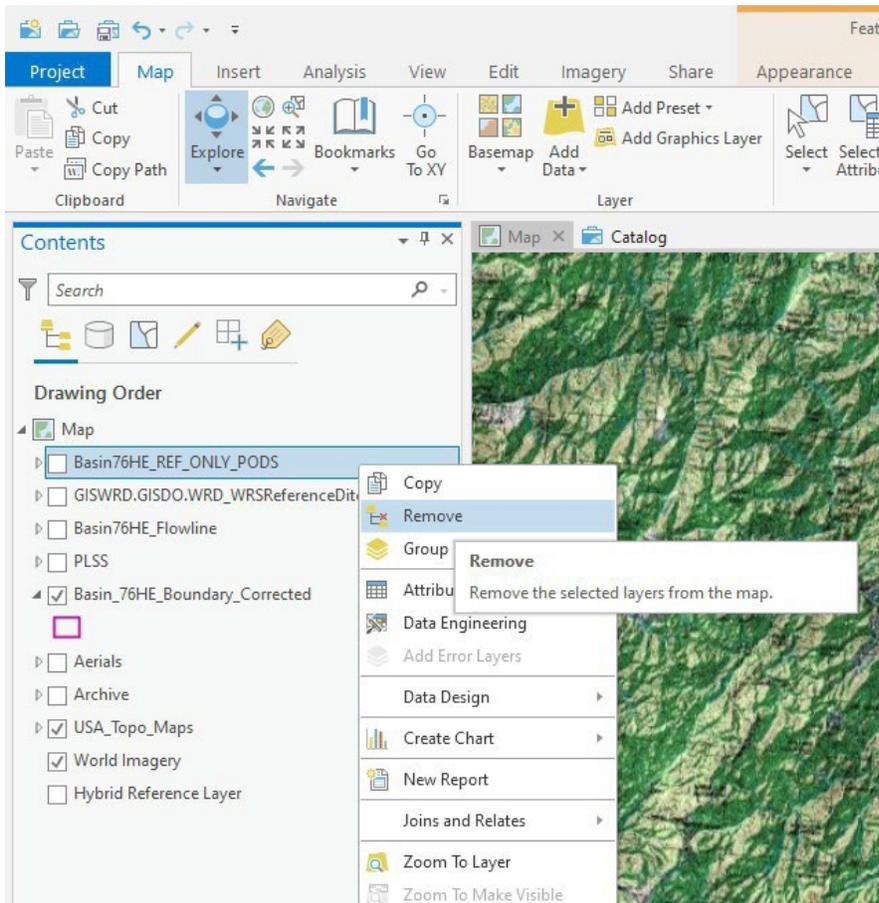
Your Opening Screen will look like this:



**Only one subset can be edited by one person at a time, others may open but cannot edit and first one to open has edit power!**

If you notice any subsets that do not belong to you, please remove them. Please leave the REF\_Only subset as you may need this to check for missing PODs from your subset - NO EDITING to this layer should be done. To remove an unwanted subset, right click on the layer

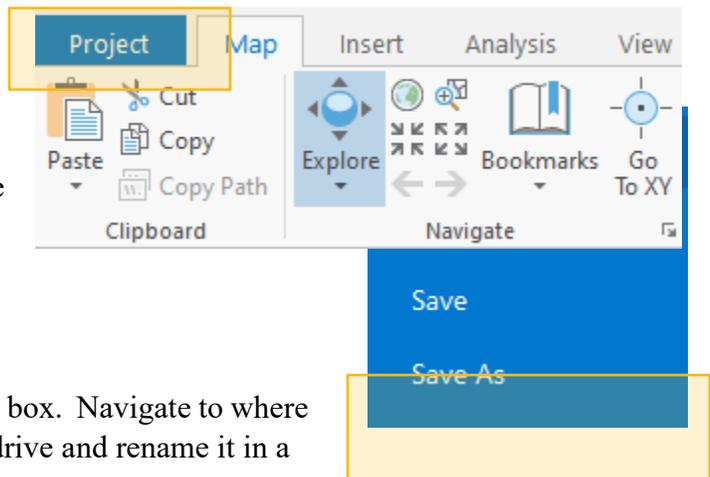
under the Contents pane and click on Remove. It will not ask if you want to remove but will immediately remove this layer:



As several people will be working in the geoTrident at once, it is always best to save a copy of the geoTrident to your local drive. This will enable you to save your screen layout even though you will be working on data stored on the Shared Drive within the geoTrident.

To save a copy on your local drive, click on Project on the Main Ribbon

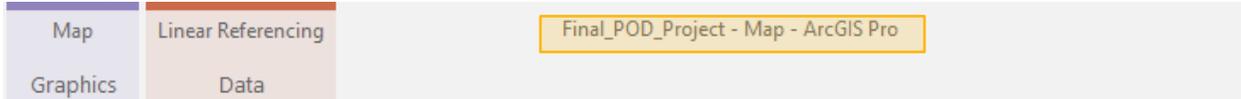
You will have a pane on the left side like this: Click Save As:



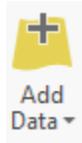
This will give you the standard save box. Navigate to where you like to put current work on your local drive and rename it in a

way you will always know you are on your local drive. I.E. I tend to add my initials or a letter or number behind the name it is on the shared drive.

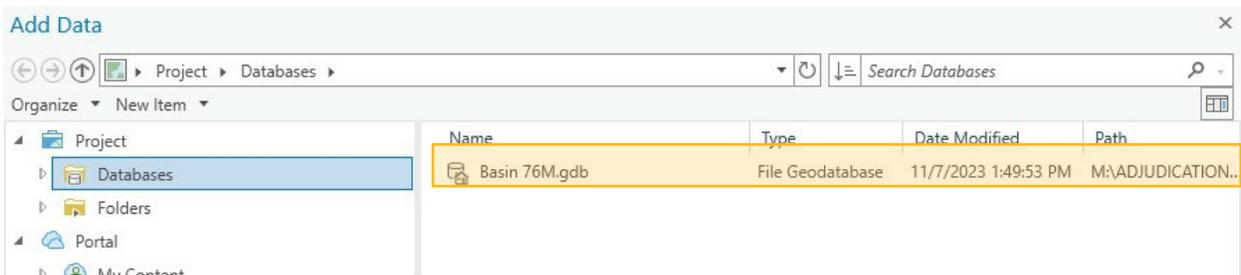
Look at the name of the project you are now working in, it should show your new name at the top of your screen:



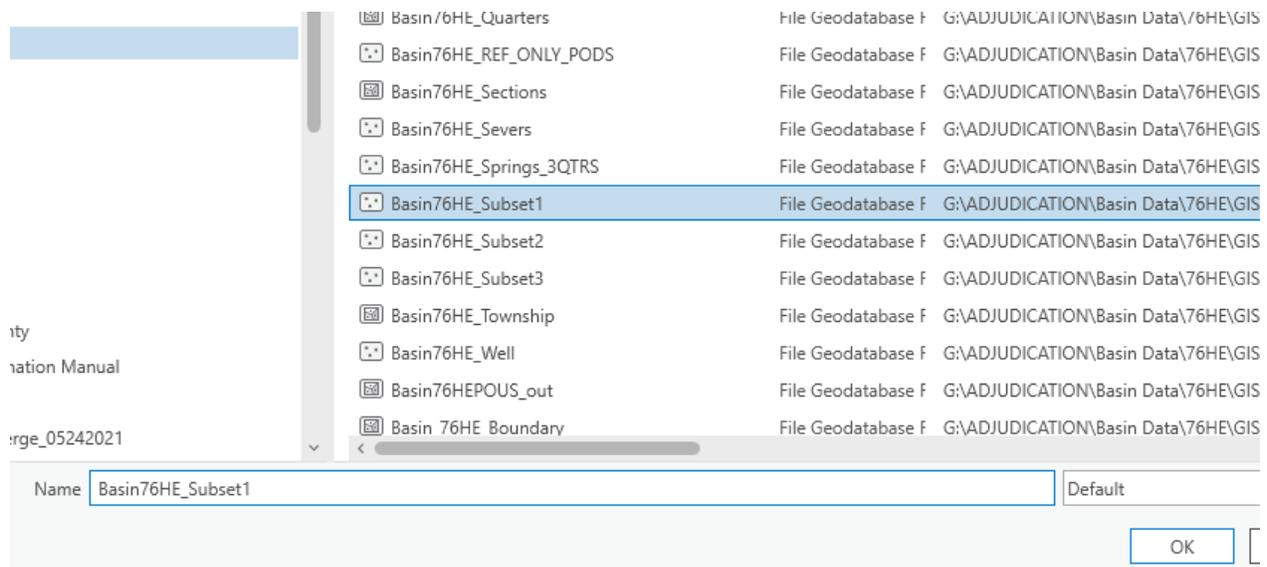
Now we will add the layer that you have been assigned by clicking the Add Data button on the top main ribbon:



The Add Data pane will open and you will want to click on Tridents, then Trident you are wanting. This should default to the correct one:

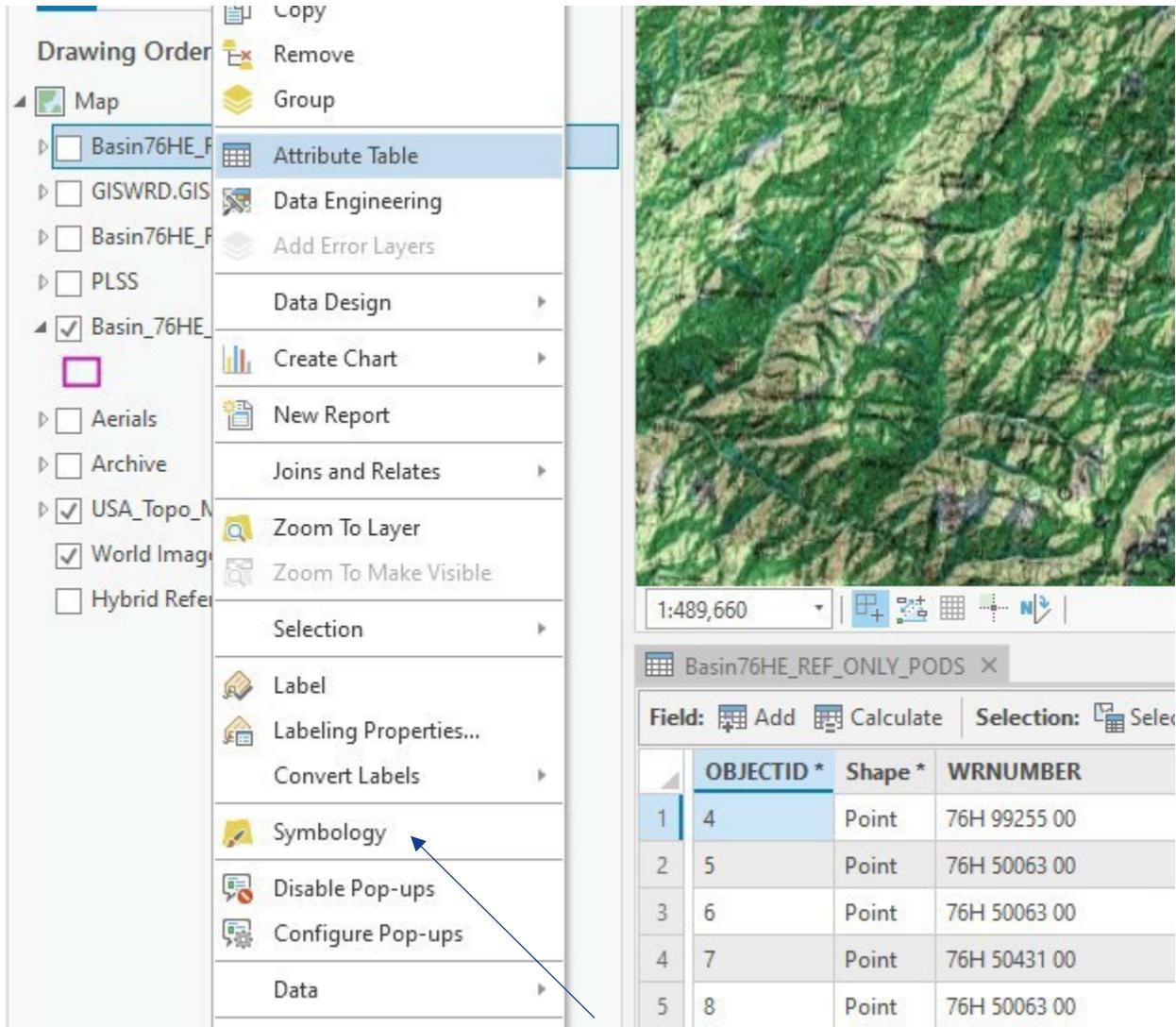


Double Click to open Trident and scroll until you find your subset, click once to add to the Name Box and the bottom and click “OK”.



Now that you have your subset, we need to do a little set-up if you choose. This step is not necessary but does help with speeding up a little as you won't have to be sliding your attribute slider back and forth!

First open the Attribute Table: The easiest way is to right click on the layer and get the Layer option box open and then click on Attribute Table. This will open your attribute table at the bottom of your screen typically.



Now we will set the fields to minimize sliding back and forth. Fields can be moved by clicking and holding down the click and sliding the field left or right. I find it most helpful to move these fields to the left of my Attribute table so that I can do most of my work without sliding back and forth.

NOTE: NEVER hide fields, that causes issues with merging at the end, move them out of the way if you want but DO NOT HIDE.

	WRNUMBER	OWNERS	PURPOSE	SRCNAME	MEANS_OF_D	COUNTY...	TWP_RNG	SCTN_NO	QT...	GOVT_LOT	POD_NO	DITCH_NAME	DitchName	Comment	Complete	Fl
3	76G 30113185	MONTAN...	STOCK	UNNAME...	LIVESTOCK DIR...	POWELL	9N10W	36		0	1			HB110	HB110	2
4	76G 30112586	MONTAN...	STOCK	UNNAME...	LIVESTOCK DIR...	POWELL	9N9W	26		0	1			HB110	HB110	3

Once you have completed one POD, you will be able to do a symbology change if you like and have those completed a different color from those not completed. Using the right click and now choosing Symbology, you can use the Unique Values. When you click on the Symbology, it will open a pane on the right-hand area of your screen.

Change Primary symbology field from Single Symbol to Unique Values

Change Field 1 from the default WRNUMBER to Completed

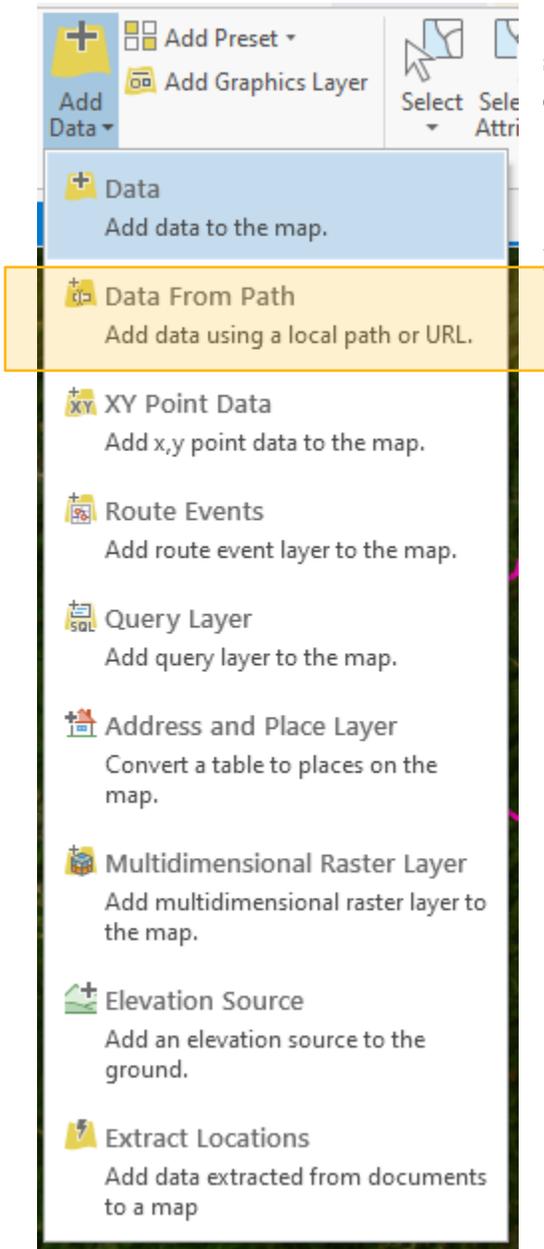
You may have to Add Values

Once you see the code you have for completed (I use a simple "Y"). You can change the symbol to whatever you chose.

Double click on the symbol and it will open up the Format pane for symbology. You may have to toggle between buttons for different options. Click apply and your unique values of complete should show.

Symbol	Value	Label
Completed	1 symbol classes	
	<Null>	<Null>
	<all other value...>	<all other value...>

Should you have any issues with the Aerials and need to readjust them, WRS and 1979 are both on the GIS Data drive and the 2009-2015 are from a website download.



To navigate to the correct Add Data field for something from a specific web address: using the carrot, drop down the list from the Add Data button.

To add the aerials for 2009, use this address: To load NAIP (just change the year)

[https://gisservicemt.gov/arcgis/services/MSDI\\_Framework/NAIP\\_2015/ImageServer](https://gisservicemt.gov/arcgis/services/MSDI_Framework/NAIP_2015/ImageServer)

To Set color for infrared (CIR):

Use the Carrot to expand the color band properties for each year:



Click on each with one right click and it will allow to adjust the color bands as follows.

Year	Red Band	Green Band	Blue Band
2015	4	1	2
2013	4	1	2
2011	4	1	2
2009	4	1	2

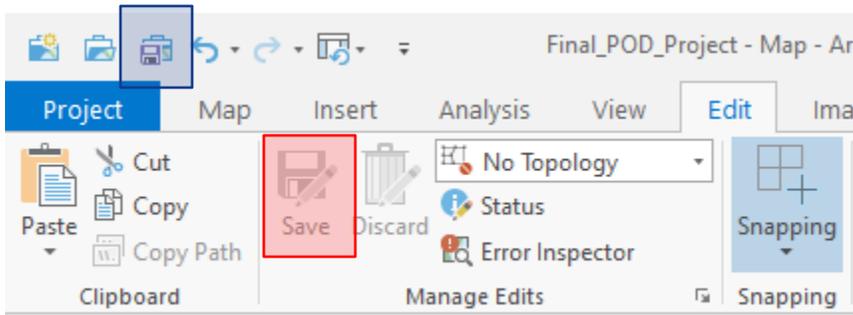
If you need, you can always readjust color bands and at times, “tease” out the water.

Now that we are all set up, Rexam can begin!

### Re-Exam

ArcPro does not require turning on Editing but you will want to make sure you Save Edits and Save the Project, these are different processes!

Saving the Project is Circled in Blue and Saving Edits is circled in Red and is under the Edit Tab on the main ribbon:



Now that we know where to save, we can start choosing PODs and zooming to that location through the Attribute Table:

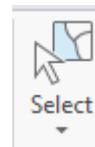
Click on the Number on the left, blue arrow and click Zoom To (red Circle)

Final\_POD\_Project - ArcGIS Pro

Basin76M\_Final\_PODs

Field: Add Calculate Selection: Select By Attributes Zoom To Switch Clear Delete Copy

	OBJECTID *	Shape *	WRNUMBER	OWNERS	WR_TY
1	265	Point	76M 100126 00	EVELYN A SCHULTZ; JAMES M SCHULTZ	STATEM
2	2628	Point	76M 100532 00	CRYSTAL S BUCK	STATEM

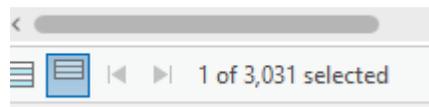


Using the Select Button on the Edit tab on the main ribbon.

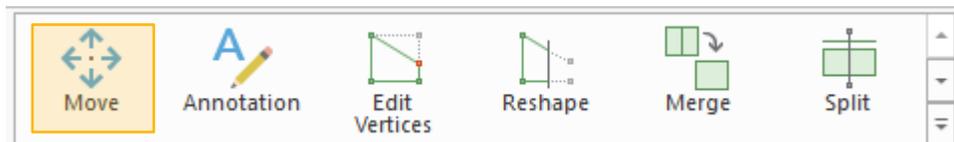
Highlight your POD to make sure no other water rights are claiming this location. If they are not, do a Select By Attributes on the Attribute Table and look at all the PODs for that water right.

If there are other PODs for other WR#s on this location, you will want to make notes as to Ditch Name, MOD, Source, and POD LLD for consistency. Don't assume they are all the same until you have examined them but if they are, these fields should be the same. In the cases of Modified by WC or Sustained, or Implied or Severed, issue remarks should be added so that each WR matches the determined value of each.

To isolate the Water Right in the attribute and only show that water right, you can use the toggle highlighted between "Show All Records" and "Show Selected Records".



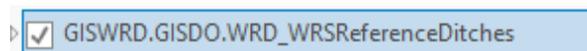
If a POD requires moving, simply click the Move button on the Edit Tab of the main ribbon,



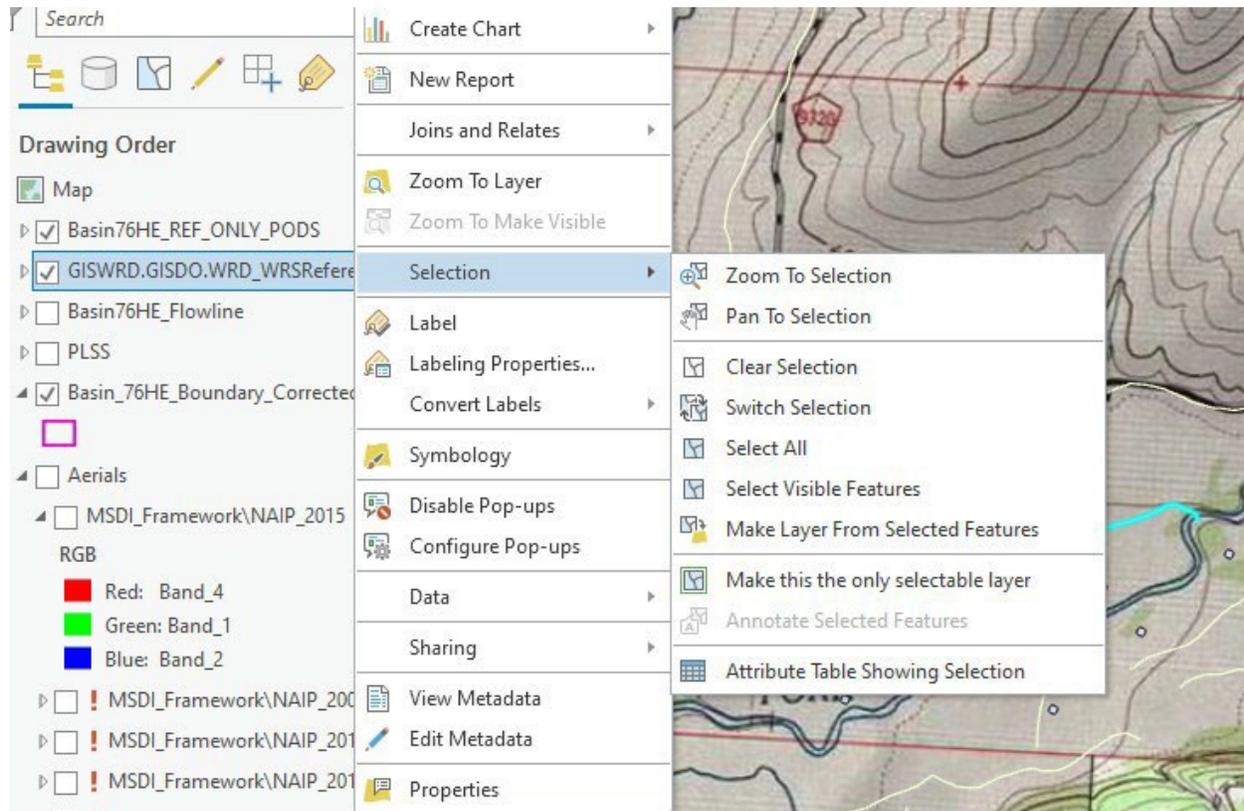
Hover your hand over the POD, click and drag. Drop and double click to complete the process.

### Digitizing and Editing a Ditch

If you are able and have the need to fix a ditch or digitize a ditch, this layer is the ditch layer.

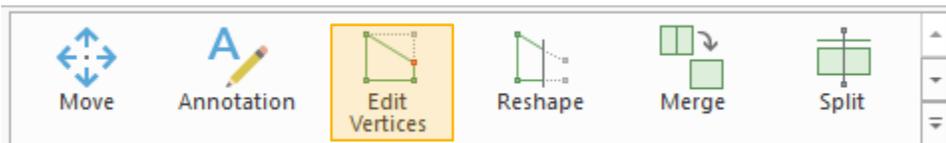


This layer can be edited by making it your selected layer with a right click and opening the layer option box. You may have to use “Make this the only selectable layer”.



Now you can highlight the ditch you are wanting to edit by using the Select tool on the main ribbon under the tab Edit.

Once selected, you can chose to “Edit Vertices” or another tool in the toolbox by using the drop-down arrow.



As this layer is inside the geoTrident, not all members maybe able to edit. If you are needing to but do not have the ability to because someone else has it open, you can request all members remove thelayer while you edit. This layer can be most helpful for reference so do your edits and alert other team members they can now add the layer back to their project.

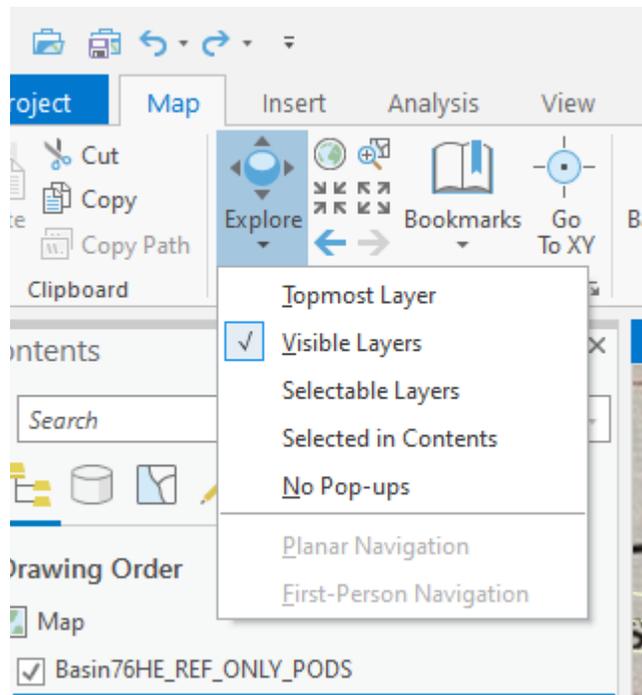
Note: You have two ditch fields in your attribute table

The one with the blue arrow points to the ditch name that comes from Trident. You will not edit this column. The red arrow points to the field that you will fill out if you identify a ditch that should be added or a name change of the ditch in Trident. You will add the correct ditch in Trident so we do need to make sure the historical ditch name stays in the blue arrow column.



0	DITCH_NAME	DitchName
---	------------	-----------

Tips: If you are trying to get information from a layer in a specific, make sure you have Visible Layers checked.



Then you will move your cursor to the location and click. The Pop-up will allow you to choose the layer and get the data you are looking for.

# X. MULTIPLE USE INDEX

## OVERVIEW:

The Water Court’s Reexamination Order dated December 14, 2012, orders the DNRC to identify claims with multiple uses in all reexamination basins<sup>14</sup>. The goal of this index is to identify multiple use scenarios.

Multiple uses of a water right occur when the same historical appropriation has been claimed for different purposes by the original claimant. The original claimant can refer to either the original claim form owner, for use and filed type of rights, or the original appropriator named in the decree, for decreed types of rights.

A multiple use is determined through review of an index, submitted documentation, and analyzing the intent of each claim. DNRC identifies multiple uses by establishing whether the supporting documentation in the claim files is identical for two, or more, claims of different purposes.

## PROCESS:

Complete this action item prior to the decree exceeded and over-claimed filed notices of appropriation action items.

Your Team Lead will request the index from Trident Administrator, prep it, and deliver it to you. The index will be structured to be able to identify multiple uses by listing sources, owners, historic types, purposes, and priority dates.

The “index,” or spreadsheet, should look similar to the one below:

Bas in	VR#	PRTY_DT	ENF_PRTY_DT	USE_CD	HIST_TYPE	FLO V	UNT	SOURCE_NAME	OWNER	PRTY_DT
76GJ	128447	1866-05-15	1866-05-15	IRRIGATION	DECR	125	CFS	LOWER WILLOW CREEK	BIGNELL, JOSEPH S	5/15/1866
76GJ	128447	1866-05-15	1866-05-15	IRRIGATION	DECR	125	CFS	LOWER WILLOW CREEK	BIGNELL, PATRICIA C	5/15/1866
76GJ	128457	1866-05-15	1866-05-15	STOCK	DECR			LOWER WILLOW CREEK	BIGNELL, JOSEPH S	5/15/1866
76GJ	128457	1866-05-15	1866-05-15	STOCK	DECR			LOWER WILLOW CREEK	BIGNELL, PATRICIA C	5/15/1866

Your Team Lead will add columns for you to list the Original Appropriator and add comments.

## INDEX REVIEW

The first step, when beginning to work on the index, is to find and enter the original appropriator.

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14 [Rules 6(c), 27(f) W.R.C.E.R.] [Section VI.C.4.]

To determine the original appropriator, go to the scanned documents and look on the claim form for the name of who filed the claim. That name is the original appropriator. Add that name to the corresponding water right on the index. You can also go to the ownership tab in Trident, to locate the first owner's name, and copy and paste the name into the spreadsheet. **However, if the claim's type of historical right was claimed as: "Decreed," you will instead enter the name of the appropriator on the decree. This is very important to remember.** In the example below, taken from a court decree, "*P. I. Moule*" would be entered on the index as the Original Appropriator.

12. That the defendant, *P. I. Moule* his heirs, executors, administrators and assigns, as against the plaintiff and all the other defendants, and his and their respective heirs, executors administrators and assigns, and subject to the prior rights of the plaintiff and of the several defendants hereinbefore in this decree respectively mentioned and described, is entitled to the use of the next 120 inches of the waters of said Swimming Woman Creek, measured as required by the statutes aforesaid, by virtue of an appropriation by his predecessor in interest, Andrew T. Jackson, made on the 1st day of April, 1889 and known in the trial of this action as the "Jackson right."

After the original appropriators have been entered onto the spreadsheet, make sure the index has been sorted by priority date, type of historical right, source, purpose, and owner, in that order.

Once your index has been properly sorted, start going through the spreadsheet and identifying possible multiple use relationships by highlighting everything that meets the criteria of same priority date, type of historical right, source<sup>15</sup>, means of diversion, Point of diversion and original appropriator. The purposes, typically, are not the same.<sup>16</sup>

The index should start to look like this: (the white lines indicate there is no multiple use situation)

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15 Pay close attention to springs. Different springs may share the same legal land description, which may make them appear to be a multiple use scenario when they, in fact, are not.

16 There may be instances where two irrigation claims are multiple uses with one stock claim, or several stock claims are multiple uses with one irrigation claim. The Water Court likes to see these in one relationship and not in many.

Basin	WR#	PRTY_DT	PUR_HIST	SOURCE	Orig. appropriator	MINOR MAJOR_TYPI	SOURCE_NAME	Comments
41U	207174-00	1920-12-31	ST	USE	LITTLE TROUT CI Kyler, Edward & Mary	SPRING GROUND	SPRING, UNNAMED TRIBUTARY OF LITTLE TROUT CRE	All Stock claims OK
41U	207176-00	1920-12-31	ST	USE	LITTLE TROUT CI Kyler, Edward & Mary	SPRING GROUND	SPRING, UNNAMED TRIBUTARY OF LITTLE TROUT CRE	All Stock claims OK
41U	207173-00	1920-12-31	ST	USE	LITTLE TROUT CI Kyler, Edward & Mary	SURFACE	LITTLE TROUT CREEK	All Stock claims OK
41U	207175-00	1920-12-31	ST	USE	LITTLE TROUT CI Kyler, Edward & Mary	SPRING GROUND	SPRING, UNNAMED TRIBUTARY OF LITTLE TROUT CRE	All Stock claims OK
41U	207178-00	1920-12-31	ST	USE	LITTLE TROUT CI Kyler, Edward & Mary	SPRING GROUND	SPRING, UNNAMED TRIBUTARY OF LITTLE TROUT CRE	All Stock claims OK
41U	17704-00	1895-03-27	ST	FILE	LITTLE TROUT CI Rowe, Conrad J	SURFACE	LITTLE TROUT CREEK	
41U	96867-00	1902-09-24	IR	FILE	LONG COULEE Levine Land and Cattle Co	SURFACE	LONG COULEE	Added MU to related tab
41U	96866-00	1902-09-24	ST	FILE	LONG COULEE Levine Land and Cattle Co	SURFACE	LONG COULEE	Added MU to related tab
41U	164168-00	1902-09-29	ST	USE	LONG COULEE The Masonic Home of Montana	SURFACE	LONG COULEE	Diff. Major type ok
41U	96906-00	1902-09-29	ST	USE	LONG COULEE The Masonic Home of M	SPRING GROUND	SPRING, UNNAMED TRIBUTARY OF LONG COULEE	Diff. Major type ok
41U	9924-00	1911-05-25	ST	USE	LONG COULEE MILFORD COLONY INC	SURFACE	UNNAMED TRIBUTARY OF LONG COULEE	
41U	97086-00	1925-12-31	ST	USE	LONG COULEE Soap Creek Cattle Co.	SURFACE	UNNAMED TRIBUTARY OF LONG COULEE	
41U	9888-00	1962-10-22	ST	FILE	LONG COULEE MILFORD COLONY INC	SPRING GROUND	SPRING, UNNAMED TRIBUTARY OF LONG COULEE	All Stock claims OK
41U	9925-00	1962-10-22	ST	FILE	LONG COULEE MILFORD COLONY INC	SPRING GROUND	SPRING, UNNAMED TRIBUTARY OF LONG COULEE	All Stock claims OK
41U	97128-00	1971-09-01	IR	USE	LONG COULEE Thomas, Arthur & Margie	SURFACE	LONG COULEE	
41U	56230-00	1899-06-01	ST	USE	MIDSLAPE SPRI USDA Forest Service	GROUND	MIDSLAPE SPRING	
41U	30110250	1901-01-02	ST	USE	MYLES CREEK Montana, State Board of Land Co	SURFACE	MYLES CREEK	
41U	117749-00	1904-04-01	ST	USE	MYLES CREEK Myles 57 INC & Nelson,	SPRING GROUND	SPRING, UNNAMED TRIBUTARY OF MYLES CREEK	
41U	117738-00	1907-04-01	ST	FILE	MYLES CREEK Myles 57 INC & Nelson,	SPRING GROUND	SPRING, UNNAMED TRIBUTARY OF MYLES CREEK	All Stock claims ok
41U	117735-00	1907-04-01	ST	USE	MYLES CREEK Myles 57 INC & Nelson, Michael E	SURFACE	MYLES CREEK	All Stock claims ok
41U	117740-00	1907-04-01	ST	USE	MYLES CREEK Myles 57 INC & Nelson,	SPRING GROUND	SPRING, UNNAMED TRIBUTARY OF MYLES CREEK	All Stock claims ok
41U	117741-00	1907-04-01	ST	USE	MYLES CREEK Myles 57 INC & Nelson,	SPRING GROUND	SPRING, UNNAMED TRIBUTARY OF MYLES CREEK	All Stock claims ok
41U	117748-00	1907-04-01	ST	USE	MYLES CREEK Myles 57 INC & Nelson,	SPRING GROUND	SPRING, UNNAMED TRIBUTARY OF MYLES CREEK	All Stock claims ok
41U	117756-00	1907-04-01	ST	USE	MYLES CREEK Myles 57 INC & Nelson,	SPRING GROUND	SPRING, UNNAMED TRIBUTARY OF MYLES CREEK	All Stock claims ok
41U	117734-00	1907-04-01	ST	USE	MYLES CREEK Myles 57 INC & Nelson, Michael E	SURFACE	UNNAMED TRIBUTARY OF MYLES CREEK	All Stock claims ok

**Helpful Hint:**

Claim numbers close in number sequence with matching ownerships, matching flow rates, and matching points of diversion can all be additional clues that water rights are multiple uses.

Once you have identified all the possible multiple use scenarios on the index, you'll want to confirm them by analyzing each claim files' scanned documents. The conclusive identification of a multiple use situation comes from comparing the supporting documentation of each water right with their matching priority dates, types of right, and original claimants (i.e., the original claim form owner or the original decreed appropriator) to confirm a valid multiple use relationship.

# COMPARING DOCUMENTATION

The image shows two forms for water rights claims in Montana, side-by-side. The left form is for 'IRRIGATION' and the right is for 'STOCK WATER'. Both forms include fields for owner information, source of water, point of diversion, and priority date. The left form has a priority date of June 30, 1947, and the right form has a priority date of June 30, 1947. Both forms include a map showing the location of the claim.

*Helpful Hint:* Using a split screen in Trident allows easy comparison of the two documents.

Also, this is a good example of two claims that are NOT a multiple use. Although these two claims meet all the criteria that make a multiple use (see criteria below), they have two different points of diversion.

## CRITERIA TO BE MULTIPLE USE

- ◆ Different **PURPOSES**<sup>17</sup>
- ◆ Same **PRIORITY DATE**
- ◆ Same **ORIGINAL APPROPRIATOR** (or **ORIGINAL CLAIM OWNER**)
- ◆ Same **SOURCE**<sup>18</sup>
- ◆ Same **TYPE OF HISTORICAL RIGHT**
- ◆ Same **DOCUMENTATION**<sup>19</sup>

For situations where a multiple use between water rights cannot be confirmed, refer to the Additional Remarks section at the end of this chapter.

After confirming a multiple use relationship, make sure you document it properly by following these three steps:

<sup>17</sup> The claims need to have different purposes, but there can be two stock claims and one irrigation claim (one of them must have a different purpose). However, Domestic use and Lawn & Garden use are a not multiple use of each other.

<sup>18</sup> The source, and source names, need to be the same – if one claim is surface water from the Green River and the second claim is a groundwater spring from the Green River, that is not a multiple use relationship. In relation to the source, if two claims meet all the criteria that make a multiple use situation but have two different points of diversion, they may not be multiple uses of each other. Contact the Quality Control Coordinator for guidance.

<sup>19</sup> Water rights containing the same supporting documentation are not a multiple use if the claim forms submitted to the DNRC do not have the same original owner name. However, the current owner does not have to be the same.

## Create New Related Right

Relationship Type \*

Required

Water Rights (At least two Water Rights are required)



Water Right #	Water Right Type	Water Right Status	Version	Actions
76M 62 00	STATEMENT OF CLAIM	ACTIVE	REEXAMINED 2	



- 1) First, enter the multiple use information into the **reexam version** in Trident. If there is an existing relationship already set up, make sure it includes all the claims you found. If no relationship exists, create a new one by clicking the button, choose “MULTIPLE” as the relationship type, and enter every applicable water right numbers for each multiple use relationship, choosing the reexamined version only. Late and severed claims should be included. Reserved rights, withdrawn/dismissed/terminated claims, and claims filed by irrigation districts will not be listed on the index, since they should not be included in multiple use relationships with timely-filed water right claims.

The following information remark will automatically be generated on the review abstract of **all** claim numbers that were entered.

Place of Use:		Acres	Govt Lot	Qtr	Sec	Twp	Rge	County
ID								
1				SWSE	24	9N	14W	GRANITE
2				SWSESE	24	9N	14W	GRANITE
3				E2NE	25	9N	14W	GRANITE
4				N2SE	30	9N	13W	GRANITE
5				S2NW	30	9N	13W	GRANITE

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT, RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

101697-00      101699-00

- 2) Secondly, make a note of the addition of the multiple use remark on a copy of each review abstract on the adjudication shared drive. Document that you added the multiple use remark in Trident on a copy of the “Review Abstract with Comments” for **EVERY** claim that make this a multiple use. For example, the text comment may state: *“Added MU remark to related tab to this claim and 76GJ 101699-00. Same type, source, date, and orig. owner. KB 10/31/2023.”* The Review Abstracts are located at: *MMBDATA(\DNRHLN2382) /ADJUDICATION/Basin Data/(applicable basin)/Review Abstracts with Comments.*
- 3) Lastly, document each multiple use relationship in the Comments column on the spreadsheet to record the work that was done. For example, this comment may state: *“Added multiple use for 76GJ 101697-00 and 76GJ 101699-00. KB 10/31/2023”* or *“Not a multiple use. KB 10/31/2023.”*

#### Additional Remarks

---

P360 THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THE CLAIM INDICATES A **USE RIGHT**.

P390 THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. THE PRIORITY DATE ON THE **NOTICE OF APPROPRIATION** IS **MM/DD/YYYY**.

P455 THE PRIORITY DATE MAY BE QUESTIONABLE. THE **SOURCE** DESCRIBED ON THE FILED NOTICE OF APPROPRIATION IS INCONSISTENT WITH THE CLAIMED **SOURCE**.

M20 THE CLAIMS LISTED FOLLOWING THIS STATEMENT MAY BE A MULTIPLE USE OF THE SAME RIGHT. THESE CLAIMS MAY NEED A MULTIPLE USE REMARK. **41X 1234-00, 41X 1235-00**.

---

Situations may occur where a multiple use of a water right appears to exist but cannot be confirmed and require an issue remark. The M20 is intended to flag potential multiple use situations that cannot be confirmed.

For instance, if the documentation supports a multiple use relationship, but the claims’ priority dates don’t match, you will add a P390 remark to the applicable claims.

A priority date issue arises when a claim’s source differs from the submitted documentation in the claim file. In this case, adding a P455 would address this issue.

It's very common to have a filed type of right for irrigation and a stock claimed as a use right, but the documentation in the stock claim shows it is a filed type of right. In this instance, you would add the P360 remark to the stock claim, so the multiple use relationship can be established. Make sure to document the likely multiple use relationship between these two claims on the claim's notes that are added to the review abstract on the shared drive.

# XI. DECREE EXCEEDED INDEX

## OVERVIEW

The Water Court's Reexamination Order dated December 14, 2012 orders the DNRC to identify decree exceeded claims in all reexamination basins. A decree exceeded situation occurs when one or more claim(s) are filed on the same formerly decreed right and their combined flow rates exceed the amount quantified by the court in a historical stream or ditch decree. The DNRC will identify decree exceeded situations by comparing the claimed flow rates of water rights<sup>20</sup> with a decreed type of right against the total flow rates associated with their corresponding historical decreed appropriations.

A total flow rate for several claims based on the same decreed appropriation that is greater than the original decreed flow rate may be due to a multiple use situation [see Chapter 7 of this guidebook or the Claim Examination Manual: Purpose: Multiple Use" (Section VI.C.4)]. If there is not a multiple use relationship, then the prior decreed appropriation has been exceeded. Below is an example of such an issue:

*These two claims are both based on the 40 miner's inch right previously decreed to John Tingley in Choteau County District Court Case No. 652 out of Big Sandy Creek with a priority date of May 24, 1888. Together, these claims' flow rates have exceeded the previously decreed right as follows:*

<b>Claim No.</b>	<b>Claimant</b>	<b>Flow Rate</b>
<b>40H-1-00</b>	<b>I X Ranch Co.</b>	<b>1.00 CFS (40 MI)</b>
<b>40H-2-00</b>	<b>Doris Morris</b>	<b>1.00 CFS (40 MI)</b>
<b>Total: 2.00 CFS (80 MI) *</b>		

*\*The objective is for all claims, together, to be less than or equal to the flow rate previously decreed.*

When a historical decreed right has been exceeded, a decree exceeded issue remark will be added to the associated claims<sup>21</sup> Based on the example above, the following D5 issue remark would be entered into Trident and would appear on the abstracts of the two claims:

---

**D5 THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 40 MINER'S**

---

20 A decreed appropriation can appear exceeded due to Trident calculations. For example, a flow rate might display as 10.2 MI. The 0.2 is negligible and should not be counted towards decree exceedance.

21 [Sections VI.J.3.b and VII.B.5.b.] [Rules 14(e), 19(e), 24(e), and 29(e), W.R.C.E.R.].

## INCHES DECREED IN CASE NO. 652, CHOTEAU COUNTY. 40H-1-00, 40H-2-00.

DNRC offices should already have complete copies of District Court decrees for the counties within their region's jurisdiction. If not, a copy can be obtained at the county courthouse. If a Supreme Court ruling has an impact, a copy of the decree can be obtained from the state law library. Each office should also have historical decree index books, compiled during the Water Resources Survey, that contain a condensed version of the decrees. Always start by reaching out to the appropriate regional office before expanding your search.

### PREPARING YOUR INDEX

Your Team Leads will usually complete this step.

Your Team Lead will request the index from Trident Administrator, prep it, and deliver it to you. The multiple use index should be completed prior to completing this action item. For this process, you will be given an excel sheet of all "decreed" type statements of claim. Since this index pulls the flow rates as they appear in Trident (in CFS or GPM) it is necessary to convert them to miner's inches (MI) for analysis. The following steps will walk you through this process<sup>22</sup>.

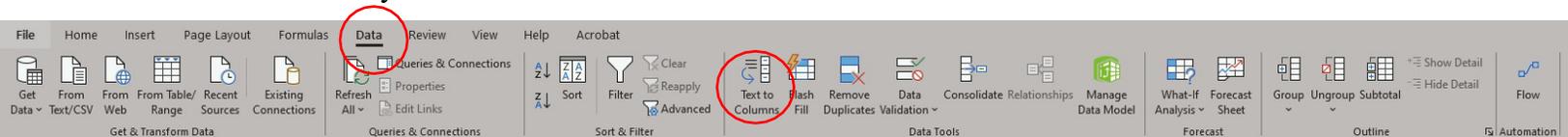
Set up Headers.

Insert new columns with the following headers:

- ◆ Decree Portion
- ◆ Decree Section
- ◆ Decree Portion Notes
- ◆ Comments

Set up conversion to Miner's Inches (MI):

1. Select the whole FLOW\_RT column in your sheet.
2. Under your DATA tab, select the TEXT TO COLUMNS function. This will separate the units from the numerical value of the flow rate into two separate columns. This is necessary for the conversion function to work.



3. A new wizard will open. Select DELIMITED and hit NEXT.

---

<sup>22</sup> Your team lead should have completed the following steps when preparing the index.

- Under Delimiters, make sure SPACE is the only delimiter selected. Click NEXT, then FINISH. A new column with the units will appear next to the number values. Label this column “UNIT.”
- Insert a new column to the right of the new “UNIT” column. Label this column “MI Conversion.” Select the top box (row 2, under header) in the new column and write the following formula to convert flow rates to MI. This formula will convert both GPM and CFS to MI.<sup>23</sup>

$$=IFS(U2="CFS",T2*40,U2="GPM", (T2/448.8)*40,ISBLANK(T2),"")$$

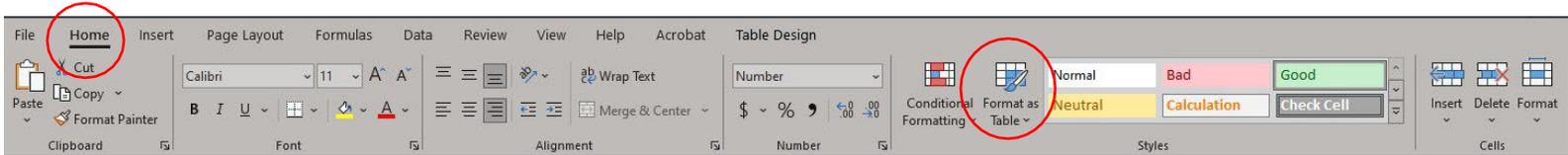
- The Red portion of the formula should be the cell under “FLOW\_RT” in your row; the blue portion of the formula should be the cell under “UNIT.”<sup>24</sup>

The screenshot shows the Excel formula bar with the formula: `=IFS(U2="CFS",T2*40,U2="GPM", (T2/448.8)*40,ISBLANK(T2),"")`. Below the formula bar, a table is visible with columns: Portion Notes, Comments, WR#, PRTY\_DT, FLOW\_RT, Unit, MI Conversion, VOL, and SOURCE. The FLOW\_RT column contains values 76H-12115-00 and 76H-12118-00. The Unit column contains CFS. The MI Conversion column contains the formula `(T2, "")`. The VOL column contains BITTERROOT RIVER, WEST FORK. The SOURCE column contains BITTERROOT RIVER WEST FORK.

- The new conversion should appear. Grab the bottom right corner of that box and drag down to copy the formula through every row in that column. Now, all your flow rates have been converted to MI.

Format your sheet as a table.

Formatting your workbook as a table will allow you to sort your data. To do this, under the HOME tab, select FORMAT AS TABLE. Make sure “My Table Has Headers” is checked.



Sort the data.

First, sort your “WR\_STATUS” column. Then select every row with withdrawn, terminated, and dismissed claims. You may delete these rows by right clicking and selecting DELETE. The department is not reexamining any elements in withdrawn, terminated, or dismissed claims. Next, sort your data by the following columns in this order:

- Source Name
- Priority Date
- Owner
- Flow Rate

<sup>23</sup> Some decrees use CFS. If a decree uses CFS, use the following equation instead:

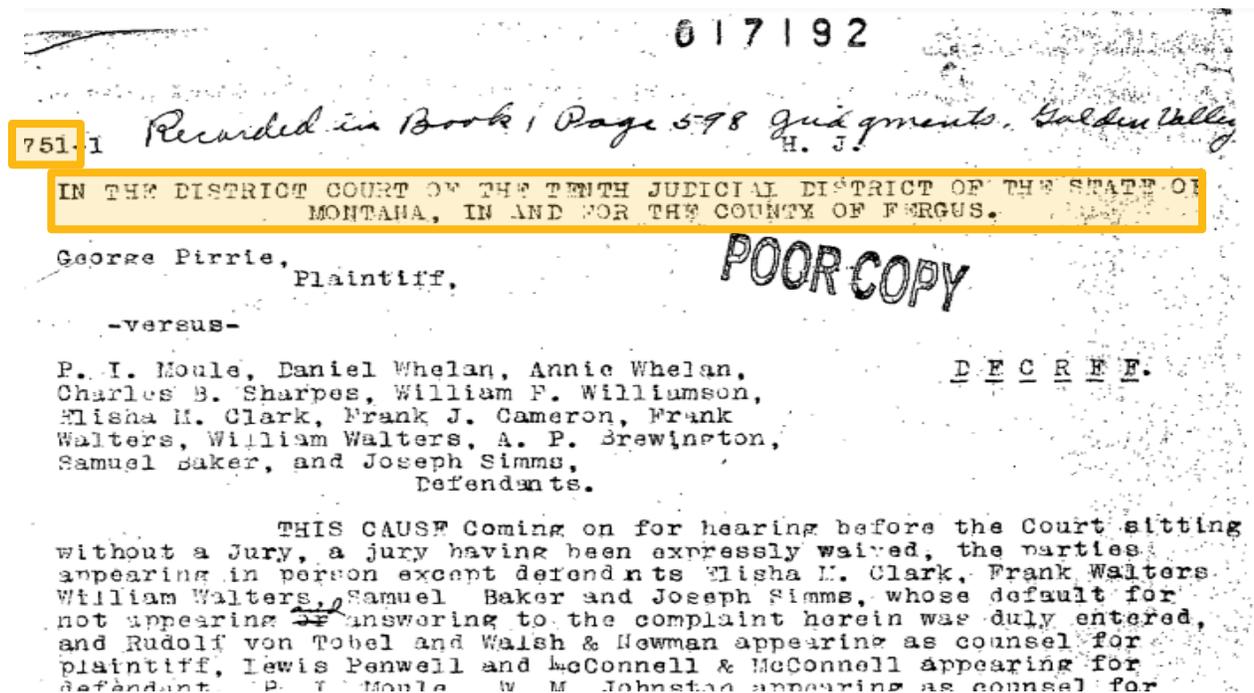
$$=IFS(U2="CFS",T2,U2="GPM", (T2)/448.8,ISBLANK(T2),"")$$

<sup>24</sup> If your FLOW\_RT is in column A, write A2 in the equation; if it is in column, B, write B2, etc.

## ADD DATA TO YOUR INDEX

To analyze the data for decree exceeded situations, you need to add additional data into the spreadsheet. Research and enter data into the spreadsheet by looking at the scanned documents of the original claim file and comparing the historical decrees where necessary. The following section will describe each data entry you will need to complete for each water right. All the information will be collected from the historical decree that the right is based on.

You can usually find the decree documentation for a claim within a few pages in the scanned document, just after the claim form. Identify the decree documentation by the court heading, as shown in the example below.<sup>25</sup>



The example below shows what a historically decreed appropriation often looks like for a claimed water right. Not all claimed decreed appropriations will be this clearly identified. Sometimes, identifying the appropriation being claimed may require reading the master's report or matching the claimed priority date and flow rate with the decree documentation in the file.<sup>26</sup> If the claimed decreed appropriation cannot be identified, or if there's no decree documentation on file, add a P355 issue remark to the claim.

25 Some claimants initially submitted incorrect court cases that aren't part of the applicable stream or ditch decree. Search the file to locate the correct decree that was either resubmitted or the claim examiner obtained.

26 It is important to determine if the claimed source is the decreed source. Some decrees don't specify unnamed tributaries or springs. Several sources may also have the same name within one basin. For instance, there are three Spring Creeks in basin 4II, but only two of them are decreed streams.

12. That the defendant, P. I. Moule, his heirs, executors, administrators and assigns, as against the plaintiff and all the other defendants, and his and their respective heirs, executors administrators and assigns, and subject to the prior rights of the plaintiff and of the several defendants hereinbefore in this decree respectively mentioned and described, is entitled to the use of the next 120 inches of the waters of said Swimming Woman Creek, measured as required by the statutes aforesaid, by virtue of an appropriation by his predecessor in interest, Andrew T. Jackson, made on the 1st day of April, 1881, and known in the trial of this action as the "Jackson Right."

P355 THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.

Using the example above, enter the missing data into the index as follows.

Column	Explanation	Entry
HIST_COUNTY	The county where the decree was filed.	Fergus County
CASE/DOC_NO	This is the case number. <sup>27</sup>	751
HIST_DECREED_PRIORITY_DT	This is the priority date described in the historical decree. Do not just copy the claimed priority date.	1889-04-01
HIST_SOURCE	This is the priority date described in the historical decree. Do not just copy the claimed priority date.	Swimming Woman Creek <sup>28</sup>
HIST_APPROPRIATOR	This is the person listed in the decree portion whom the right was decreed to.	P I Moule
HIST_MNRS_INCHES	This is the flow rate described in the decree.	120
HIST_FLOW_DESCRIPTION	This is an optional category used to provide additional contextual information,	N/A

<sup>27</sup> Usually this is handwritten at the top of the initial decree page, but it may be necessary to find it in a decree index.

<sup>28</sup> There may be situations where the historical decree calls the source one name but, over time, that source name has been changed; so, the decree does not always match the claimed source (but some claimants note both names on their application). Research is needed to make sure they are the same source.

	such as a historical ditch name or legal land description. This may be helpful where a single appropriator may have multiple decreed rights from the same source with different flow rates and ditches.	
Decree Portion	This is the portion of the decree being claimed. <sup>29</sup>	Findings of Fact
Decree Section	This is the section of the portion being claimed. This information <i>must</i> be entered.	12
Decree Portion Notes	This is an optional category used to add notes so other specialists referencing the sheet later can easily find the portion being referenced.	Page 3

## DATA ANALYSIS

Looking for decree exceedances.

With the data compiled, sort your index by:

1. Historical Appropriator
2. HIST\_DECREED\_PRIORITY\_DT
3. Source
4. Case/Doc No.

---

<sup>29</sup> Most of the time, this will be either “Findings of Fact” or “Conclusions of Law.” You may have to look at the complete historical decree to find this information.

Now, it should be easy to analyze the data for decree exceeded scenarios and inconsistencies. To look for decree exceeded scenarios, identify all the water rights that lay claim to the same decreed appropriation. To claim the same historical right, they must have the same historical appropriator, the same source, the same ditch (if applicable) and the priority date.

HIST_SOURCE	HIST_APPROPRIATION	HIST_MNRS_INCH	Decree Section	#	Decree Portion Notes	Comments	PRTY_DT	FLOW_RT	UNIT	CONV TO MI
Granite Creek	Estelle Stoddard	40.00	Findings of Fact	10	Page 9	OK	1881-06-01	224.40 GPM		20.00
Granite Creek	Estelle Stoddard	40.00	Findings of Fact	10	Page 9	OK	1881-06-01	112.20 GPM		10.00
Granite Creek	Estelle Stoddard	40.00	Findings of Fact	10	Page 9	OK	1881-06-01	112.20 GPM		10.00
Granite Creek	L.B. Booker	40.00	Findings of Fact	14	Page 10	OK	1894-05-01			
Granite Creek	C.E. Jacobsen	30.00	Findings of Fact	12	Page 9	OK	1896-05-01	336.60 GPM		30.00
Granite Creek	John H. Weingart	30.00	Findings of Fact	8	Page 8	OK	1916-06-01	336.60 GPM		30.00
Greenhorn Creek	Gilbert Livestock Cor	150.00	Findings of Fact	37	Page 28	D5 added; added decree info to database	1863-05-01	3.75 CFS		150.00
Greenhorn Creek	Gilbert Livestock Cor	150.00	Findings of Fact	37	Page 28	D5 added; added decree info to database	1863-05-01			
Greenhorn Creek	Gilbert Livestock Cor	150.00	Findings of Fact	37	Page 28	D5 added; added decree info to database	1863-05-01	3.75 CFS		150.00
Greenhorn Creek	Gilbert Livestock Cor	80.00	Findings of Fact	37	Page 28	OK	1866-05-01	2.00 CFS		80.00
Greenhorn Creek	Gilbert Livestock Cor	160.00	Findings of Fact	37	Page 28	OK	1879-05-01	4.00 CFS		160.00
Greenhorn Creek	Gilbert Livestock Cor	20.00	Findings of Fact	37	Page 28	OK	1880-05-01	224.40 GPM		20.00

In a decree exceedance scenario, the sum of the MI of the water rights claiming that decree exceeds the appropriation documented in the historical decree. If there are rights that are **multiple uses**<sup>30</sup> of the same right, only use the flow rate associated with the multiple use right that has the highest flow rate.<sup>31</sup> If the sum is less than, or equal to, the original appropriation documented in the historical decree case, there is no decree exceedance. If the sum of the flow rates exceeds the original appropriation, a decree exceeded issue remark is needed.

The index example above shows that there are 300 miner's inches claimed against the 150-inches decreed to the Gilbert Livestock Company and appropriated on May 1, 1863. This is a decree exceeded situation. In this situation, you would add a D5 issue remark to the **reexamination** version in Trident. You would enter **all** the water right numbers into the D5 remark that exceed the decreed appropriation (as shown below), *including claims with null flow rates, exempt claims, and claims previously litigated for decree exceedance*.

---

D5 THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 150 MINER'S INCHES DECREED IN CASE NO. 3089, MADISON COUNTY. 41C 210915- 00, 41C 206688-00, 41C 206691-00.

---

Enter water right numbers in the following format, as shown in the example above: basin number, water right number, and extension number (e. g. 43D 141-00). Enter the numbers in

30 This is why it is necessary to complete the multiple use index prior to conducting the analysis for the decree exceeded index.

31 For example, if 41C 100-00 claims 40 MI and 41C 101-00 claims 20 MI, but they are multiple uses of the same right, you would only count the 40 MI towards the total for that historically decreed amount.

numeric order. Add the D5 remark to **every** statement of claim based on the same decreed appropriation. The issue remark on each water right in the decree exceeded relationship should all list the same numbers.

If you run into a situation where you identify a decree exceeded situation that has already been litigated, but you identify an additional claim that was not a part of the litigation, that means the claim was likely missed during proceedings. If this is the case, the issue still involves every claim based on that historic decree. **The D5 remark should be added to each claim that is a part of the decree exceedance situation.**

Document any issues or remarks on the review abstract PDF in the basin folder.

*For rights where there is a decree exceeded issue*, the information that has been researched and entered into the spreadsheet during reexamination should also be entered into the Historical Data tab of Trident.<sup>32</sup> The Historical Data tab in the **reexamined** version should be populated with the following index information: the Decree, County, Filing Date (or date done in open court if no filing date), Case #, Source, Appropriator, Priority Date, Miner's Inches, and flow description (only needed for non-quantified flow rates and decreed volumes).

**View / Edit Water Rights Version Details**

Water Right # 40A 17192 00	Water Right Type STATEMENT OF CLAIM	Priority Date and Time 04/01/1889 00:00	Version REEXAMINED 3	Operating Authority Date 06/07/2017	Version Status ACTIVE
-------------------------------	--	--	-------------------------	--	--------------------------

Examiner Name:  Standards Updated:

---

**Courthouse Filing Information (Historical Filing)**

Right Type DECREED	Right Type Origin DECREED	
Case/Document # 751	Filing Date 07/23/1903	County FERGUS

**Decree History**

Decreed Appropriator ANDREW T. JACKSON			
Decreed Month 4	Decreed Day 1	Decreed Year 1889	Miners Inches 120

## Additional Issues

Check for the following issues and apply the relevant issue remarks:

A claim does not include a copy of the decree, the claim and decree information conflict<sup>33</sup> or flow rates are not specified in the claim or the decree. For decree documentation issues, see the list of issue remarks below.

<sup>32</sup> Do not enter historical data into Trident for rights where there is no decree-related issue.

<sup>33</sup> Such as the priority date or source name claimed does not match the priority date or source name specified in the claimed decreed appropriation.

---

P390 THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. THE PRIORITY DATE ON THE SUBMITTED DECREE IS MM/DD/YYYY.

P460 THE PRIORITY DATE MAY BE QUESTIONABLE. THE SOURCE DESCRIBED IN CASE NO. 123, MONTANA COUNTY, IS INCONSISTENT WITH THE CLAIMED SOURCE.

---

If a single claim is identified with a decreed historical type of right that exceeds the decreed appropriation supporting the claimed flow rate, use the issue remark below. This scenario may be encountered when researching potential decreed exceeded situations.

---

F90 THE CLAIMED FLOW RATE EXCEEDS THE 123 MINERS INCHES OF MONTANA CREEK DECREED IN CASE NO. 123, MONTANA COUNTY.

---

For claims with a decreed historical type of right where no flow rate is claimed, or the decree does not specify a flow rate, add one of the following issue remarks:

---

F91 CASE NO. 123, MONTANA COUNTY, DOES NOT SPECIFY A FLOW RATE; CLAIMED FLOW RATE RETAINED.

F92 CASE NO. 123, MONTANA COUNTY, DECREES A FLOW RATE OF 150 MINER'S INCHES; NO FLOW RATE WAS CLAIMED.

F93 CASE NO. 123, MONTANA COUNTY, DOES NOT SPECIFY A FLOW RATE; NO FLOW RATE HAS BEEN CLAIMED.

---

If multiple claims claim a decreed appropriation that does not specify a flow rate and it appears that there may be a decree exceeded situation, add a free-text decree exceeded issue remark such as the following example:

---

DEIS CASE NO. 5513, BEAVERHEAD COUNTY DOES NOT SPECIFY A FLOW RATE. THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT MAY BE FILED ON THE SAME FORMERLY DECREED RIGHT AND APPEAR TO EXCEED THE ENTIRE FLOW OF THE CLAIMED SOURCE. 41B 88314-00, 41B 88315-00, 41B 88316-00, 41B

88318-00, 41B 88319-00, 41B 88320-00, 41B 88327-00, 41B 88328-00, 41B 88329-00, 41B 88330-00, 41B 88331-00.

---

### IMPORTANT NOTE

In this index, you may notice issues that do not fit neatly into any of the categories above. Consult the Quality Control Coordinator or Team Lead if issues related to the decree exceeded review other than those described above are identified. Because many of these statements of claim may have already gone through Water Court cases, the Water Court may have identified or replaced information from the original claim, so it is important to read the file thoroughly.

Whenever you add an issue remark to a claim, **check the scanned documents for master's reports or other court documents** to see if the issue has already been addressed in the Water Court. For example, a claim may not have submitted any decree information, so you would normally add a P355 remark; however, during previous court proceedings the Water Court may have identified and described what historical appropriation the right should be attributed to. In this case, the P355 is no longer applicable.

# XII. FILED OVER APPROPRIATED INDEX

## OVERVIEW

An over-filed Notice of Appropriation situation is where the flow rate of a water right or water rights exceed the flow rate listed on the historical filed notice of appropriation. Claims exceeding the historical flow rate of a filed notice of appropriation will receive an issue remark identifying the situation for the court.

Terminated, dismissed, and withdrawn claims should all be omitted from the over-filed notice of appropriation search as they are not included in the reexamination process. Claims that meet the definition of exempt uses (instream uses for livestock and domestic or groundwater used for livestock and domestic purposes) should also be excluded from this analysis. Exempt claims will be issue remarked only in a multiple use situation and are not part of the dataset provided for this review.

## PROCESS

The multiple use index should be completed prior to completing this index.

Your Team Lead will request this index from Trident Administrator and deliver it in an excel spreadsheet containing all active *filed statements of claim* in a basin. The spreadsheet should include all the following data fields: water right number, purpose, priority date, source name, and flow rate. Sort the spreadsheet by source name, priority date, flow rate, and owner name.

### Preparing Your Index

In the excel sheet, insert four columns titled:

- ◆ Original Filer
- ◆ Date of Appropriation
- ◆ Historical Source
- ◆ Document Type
- ◆ Flow Rate

Format your spreadsheet into a table and sort you sheet according to:

- 1) Priority Date
- 2) Source

### Gathering Data

Next, retrieved the scanned documents for each right. In the scanned documents, there should be some form of historical notice of appropriation. These may be filed *Notice of Water Rights*, a *Declaration of Vested Groundwater Rights*, or a similar filed document. From these documents, collect the information to fill in the columns you've entered. The example below shows a filed *Notice of Water Right*.

**NOTICE OF WATER RIGHT.**

STATE OF MONTANA, )  
 ) ss.  
 County of Madison ) TO ALL WHOM THESE PRESENTS MAY CONCERN:

BE IT KNOWN, That I, **Albert Norton**, a native-born citizen of the United States, and a bona-fide resident of Madison County Montana, of Laurin (post-office) in said County and State, do hereby publish and declare as a legal notice to all the world

I. That I have a legal right to the use, possession and control of and claim by prior appropriation 10 cubic feet **or 400 inches** per second continuous flow of the waters of **Quakenasp Creek** in said County and State, for agricultural, mining, domestic and for irrigating and other beneficial purposes:

1. That the special purpose for which said water is intended to be used and the place of intended use is in and upon the N.E.  $\frac{1}{4}$  of the N.E.  $\frac{1}{4}$  of the S.W.  $\frac{1}{4}$ , the S.  $\frac{1}{2}$  of the N.E.  $\frac{1}{4}$  of the S.W.  $\frac{1}{4}$ , the S.  $\frac{1}{2}$  of the S.W.  $\frac{1}{4}$  of Section 27, and the N.E.  $\frac{1}{4}$  of the N.W.  $\frac{1}{4}$  of Section 34, all in Township 6 South of Range 4 West, M.A., containing 160 acres, known as the "Quakenasp Ranch".

11. That I and my predecessors in interest have taken said water out of, and diverted it from said Quakenasp Creek by means of a ditch which said ditch is <sup>approximately</sup> 24 by 18 inches in size and carries or conducts 400 inches of water from said creek; said ditch taps and diverts the water from said stream at a point upon its North bank at a point about 25 rods West of a water reservoir on said creek, and about 1 $\frac{1}{2}$  miles East of the dwelling house and other structures upon the above described land, thence running, or to run, to and upon said land (and through said described land, if I so desire, to any requisite point of final discharge).

1V. That one Peter Moran, now deceased, appropriated and took said water on the **\_\_\_ day** of **\_\_\_** A.D. 1877, by means of said ditch, and the water has been used for beneficial purposes on said land each and every year since.

Column	Explanation	Entry
Original Filer	The individual who filed the historical document.	Albert Norton

Date of Appropriation	The date described as the day of first use in the filed document. <sup>34</sup>	1887
Historical Source	This is the historical source described in the filing. <sup>35</sup>	Quaking Aspen Creek
Document Type	This is the type of document filed.	Notice of Water Right
Historical Flow Rate	This is the flow rate listed. <sup>36</sup>	400 MI

## Analysis

To look for over appropriation scenarios, identify all the water rights that lay claim to the same historical filing. To exceed the filing, the sum of the flow rates of the water rights will exceed the flow rate listed on the common filed document. If there are rights that are **multiple uses**<sup>37</sup> of the same right, only count the multiple use right with the highest flow rate.<sup>38</sup> If the sum is less than, or equal to, the original appropriation documented, there is no issue. If the sum of the flow rates exceeds the original appropriation, an issue remark is needed.

Add the following issue remark to single claims involved in an over-filed notice of appropriation situation:

---

F245 THE CLAIMED FLOW RATE MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THIS CLAIM INDICATEDS A FLOW RATE OF 123 CFS.

---

When the combined flow rates of claims based on the same filed notice of appropriation exceed the flow rate written on the filing, add the following issue remark:

---

G36 THE TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS

---

<sup>34</sup> If the document does not describe when the water was first used, the claimants may have claimed the day the document was filed as a priority date.

<sup>35</sup> Note that the name of the source described in the notice may differ from the claimed source as we know it today. If there is a difference, use information such the WRS, historical maps, or cross reference the legal land descriptions to determine if the source is the same.

<sup>36</sup> The units may differ from what is in our Trident, so you will have to convert them during your analysis.

<sup>37</sup> This is why it is necessary to complete the multiple use index prior to conducting the analysis for the decree exceeded index.

<sup>38</sup> For example, if 41C 100-00 claims 40 MI and 41C 101-00 claims 20 MI, but they are multiple uses of the same right, you would only count the 40 MI towards the total for that historical flow rate.

STATEMENT USE THE SAME FILED APPROPRIATION TO DOCUMENT THE RIGHT. THE COMBINED FLOW RATE FOR THIS GROUP OF CLAIMS EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION.

---

Enter water right numbers in the following format, as shown in the example above: basin number, water right number, and extension number (e.g., 43D 141-00). Enter the numbers in numeric order. Add the G36 remark to **every** statement of claim based on the same decreed appropriation. **Exempt claims will only be added to a G36 remark if it is a multiple use of a non-exempt claim that is included in an over-filed situation, as identified in the related rights tab of Trident.**

Situations may also arise where the filed notice of appropriation does not list a flow rate, but a claim or claims may have a flow rate quantified. If only one claim in the basin includes the filed notice of appropriation that does not list a flow rate; no issue remark will be added to the claim. If multiple claims include the filing that does not list a flow rate as supporting documentation, add the following free-text issue remark:

---

GIIS THE CLAIMS LISTED AT THE END OF THIS STATEMENT CLAIM THE SAME NOTICE OF APPROPRIATION. THE CLAIMED NOTICE OF APPROPRIATION DOES NOT SPECIFY A FLOW RATE.

---

#### Additional Issues

You may encounter situations where additional issue remarks may be needed to address priority date issues. Following is a list of some of the more common priority date issues related to this index. Ask your Team Lead or Program Manager if unique situations arise.

If the claimant did not submit a historical filed document, add the following P355 issue remark.

---

P355 THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.

---

If the priority date described in the filed document differs from the statement of claim, add the following P390 issue remark:

---

P390 THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. THE PRIORITY DATE ON THE NOTICE OF APPROPRIATION IS MM/DD/YYYY.

---

If the source described in the filed document differs from the statement of claim, add the following P455 issue remark.

---

P455 THE PRIORITY DATE MAY BE QUESTIONABLE. THE SOURCE DESCRIBED ON THE FILED NOTICE OF APPROPRIATION IS INCONSISTENT WITH THE CLAIMED SOURCE.

---

### IMPORTANT NOTE

In this index, you may notice issues that do not fit neatly into any of the categories above. Consult the Quality Control Coordinator or Program Manager if issues related to the decree exceeded review other than those described above are identified. Because many of these statements of claim may have already gone through Water Court cases, the Water Court may have identified or replaced information from the original claim, so review the file carefully.

Whenever you add an issue remark to a claim, **check the scanned documents for master's reports or other court documents** to see if the issue has already been addressed in the Water Court. For example, a claim may not have submitted any historical filings, so you would normally add a P355 remark; however, during previous court proceedings the Water Court may have identified and described what historical appropriation the right should be attributed to. In this case, the P355 is no longer applicable.

# XIII. FILED & USE RIGHTS PREDATING DECREE INDEX

## PURPOSE

The purpose of the filed and use rights predating the decree index is to identify filed and use rights predating historical district court decrees in all verified basins. A P73 legal issue remark is placed on claims predating a source that includes multiple decreed rights.

In theory, any right existing on the source at the time of the decree should have been included (i.e., a 1920 decree should have captured all water use on a source at that time). This means any water right with a priority date that is older than the decree date should have been included in the decree and therefore should be a decreed right. This is not always the case; claimants often claimed *filed* or *use* rights with dates prior to these decrees. These claims must be flagged with an issue remark for the Water Court to review.

Applying P373 remarks was part of the December 14, 2012, Reexamination Order (APPENDIX, B). It identifies in the 5 action items for the Reexamination Order in preparation for the court's insurance of supplemental decrees in basins with Temporary Preliminary Decrees.

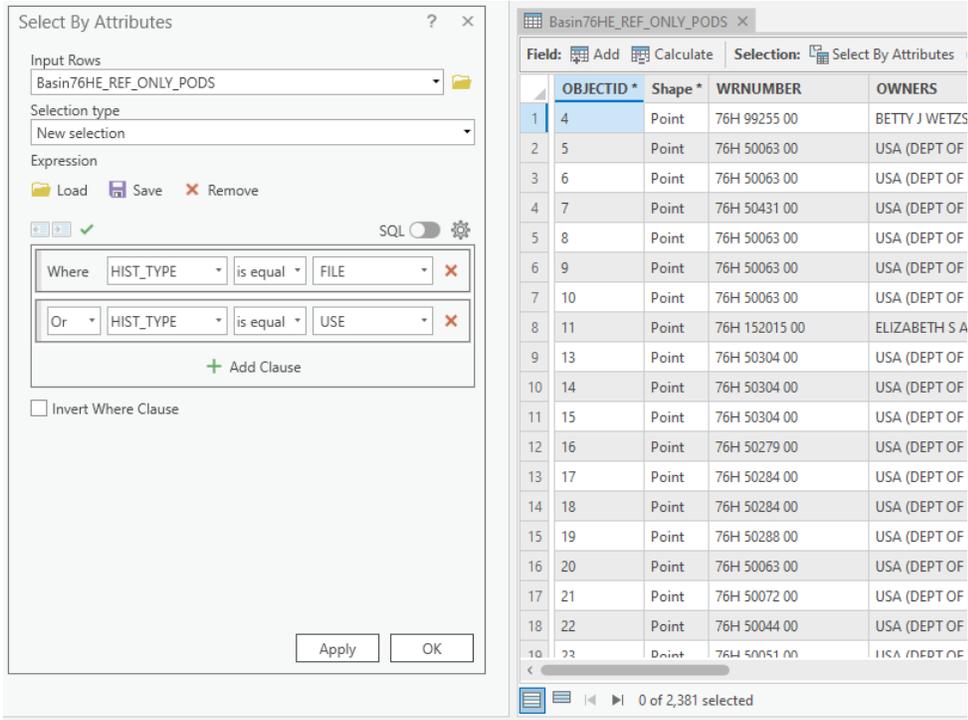
## PROCESSING THE INDEX

In Arc GIS, use the steps 1 through 6 below:

### STEP 1: Finding Data

Open contents tab, select basin number reference only pods.

- 1) Right click, open attribute table
- 2) Click, select by attributes.
- 3) Click drop down box "Where", select the appropriate field(s):
  - ◆ HIST\_TYPE, is equal, FILE, or HIST\_TYPE, is equal, USE.

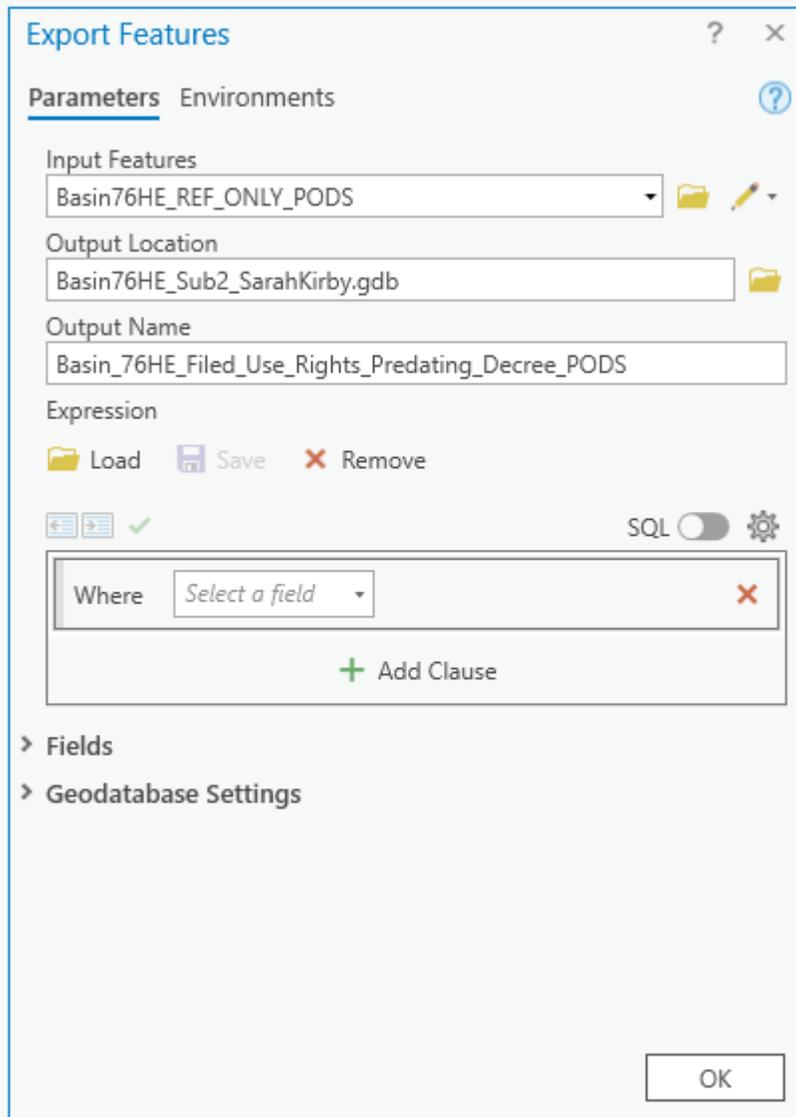


4) Click, apply and ok.

## STEP 2: Filtering Data

- 1) Click, show selected rows 
- 2) Select basin # reference only pods, right click layer.
- 3) Select, data.
- 4) Click, export.
- 5) Enter output name.
  - ◆ Note: The output name must start with a letter and spaces require an underscore.
- 6) Click, ok.

The process will run a report, that will be a new layer in the contents tab.



### STEP 3: Processing Data

- 1) Open contents tab, select: *Basin\_76HE\_Filed\_Use Rights\_Predating\_Decree\_PODS*
- 2) Right click, open attribute table

Before you start analysis, add a “COMMENTS” column, a PDF column, and a TRIDENT column to your index for documenting your work.

- ◆ Documents your changes in the COMMENTS column.
- ◆ Add a Y or N to the other two columns when you complete the task.

Using these column additions will help you remember to document the PDF and enter the information into Trident.

## REVIEWING THE INDEX

Open folder, go through the MMBDATA Drive.

Then, select folders including Decrees (historical), **county**, Basin # Decrees

*ex: MMBDATA(DNRHLN2382)\ADJUDICATION\Decrees (historical)\Missoula\76HE  
Decrees*

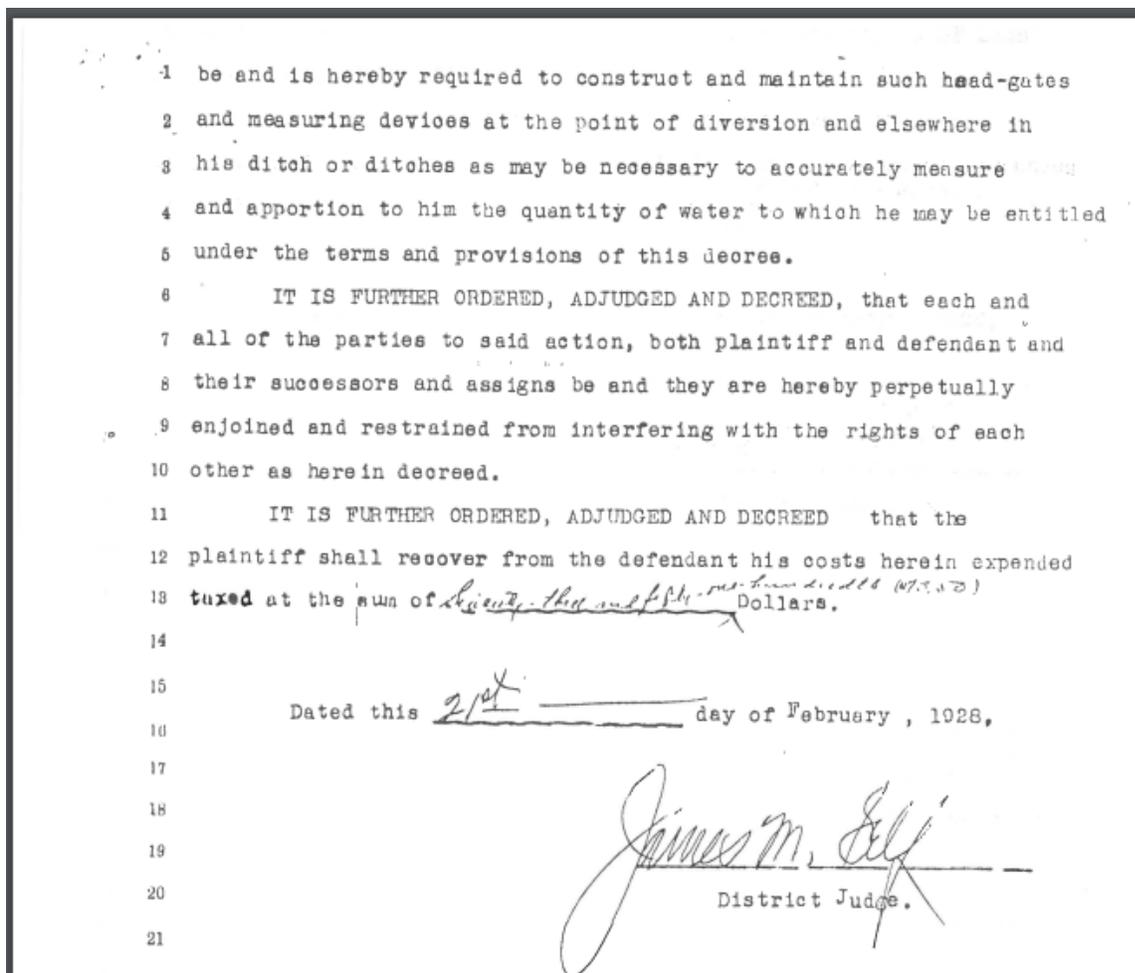
### STEP 4: Identify Cases

As part of the reexamination process, the court cases in the basin folder will be used to identify a comprehensive list of sources with filed and use rights that predate the decree.

- 1) First using a case no. in the decrees folder, identify the court ordered appointed date by the Water Master, per source.

Note: The legal priority date on a water source that predates a decree is the official signature date on the court order (i.e., water master's signature, date, source name).

*ex: Case No. 4388, Tolan Creek, date February 21<sup>st</sup>, 1928.*



- 2) Repeat steps 4.1 through 4.3 for each case no., per source.

#### STEP 5: Sort Information

- 1) Click, select by attributes.
- 2) Click drop down box "Where", select the appropriate field(s):
  - ◆ SRCNAME HIST\_TYPE, is equal, Name Creek (*Unnamed Tributary, Spring, Waste & Seepage, etc.*)
- 3) Click, apply and ok.
- 4) Review the priority date on each source.
- 5) You may remove any right with a priority date that is after the latest decree on the source.

#### STEP 6: Identify P373 Scenarios

Now, you must identify all the use and filed rights that claim a priority date prior to a historical decree. Going through your data, check each filed and use right on that source to see if it has a priority date that is *before* a historical decree on that source. For each filed or use right that pre-dates a decree, add a **P373** remark.

---

P373 THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED/USE RIGHT ON MONTANA CREEK WITH A PRIORITY DATE THAT PREDATES CASE NO 1234, MONTANA COUNTY. IF NO OBJECTIONS ARE FILED TO PRIORITY DATE OR TYPE OF HISTORICAL RIGHT, THESE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS REMARK WILL BE REMOVED.

---

Note that you added the remark in your index. Then, add the P373 in TRIDENT and document on the review abstract pdf.

# XIV. RESERVOIR INDEX

## OVERVIEW

As a part of the Water Court’s Reexamination Order dated December 14, 2012, the court ordered that the DNRC shall implement all standards proposed in the order. Of these standards, the court proposed that the DNRC standardize the period of diversion for all claims in reexamination basins. The subsequent period of diversion order dated November 10, 2014, sets the standard for the period of diversion element in reexamination basins. Below is a summary of the process of standardizing the period of diversion for different types of claims as directed by the order (APPENDIX, F).

## PROCESS

You will initially receive this index in excel format from your team lead. The index consists of all statements of claim in a basin that have a reservoir associated with it.

The reservoir index must first be split into those reservoirs that are less than or equal to 15AF and those greater than 15 AF. To do this, the **claimed volume** from the scanned documents or claim files must be looked at and entered the spreadsheet in a new column titled “claimed volume”. Sort the spreadsheet based on the claimed volume and separate each group into its own sheet, within the same excel book.

Claims with Surface Water Pits and Reservoirs with a Volume Less than or equal to 15 AF, or Groundwater Pits with any Volume

Do not estimate or add any reservoir elements to the claim. Change the Period of Diversion to year-round (01/01-12/31), remove the P164, change the period of diversion element in Trident to *Modified by Rule* and add the following information remark to the claim:

---

P162 THE PERIOD OF DIVERSION HAS BEEN STANDARDIZED BY DNRC FOR THIS CLAIM.

---

P161	P166	Period of Diversion	P164	P162	WC MOD / Sustained
Remove, unless there is a period of diversion issue remark on claim.	Remove, unless there is a period of use issue remark on claim.	Change to year-round unless WC modified, keep or sustained.	Remove unless the period of diversion is WC modified, keep or sustained.	Add remark if not WC modified, keep or sustained.	<b>If period of diversion is WC modified, keep or sustained, do nothing.</b>

Claims with Surface Water Pits and Reservoirs with a Volume Greater than 15 AF:

In your >15 AF excel sheet, add the following columns:

- ◆ Surface Area
- ◆ Dam Height
  - ◆ Dam Height is usually 3’ greater than estimated max depth for freeboard.
- ◆ Max Depth
- ◆ Capacity<sup>39</sup>
  - ◆  $Capacity = (Surface\ Area) \times (Max\ Depth) \times (0.4)$

Populate the columns with information available in the scanned documents. **Information in the scanned documents precludes our estimates.**

In the absence of information in the scanned documents, estimate the elements using available sources including pre-1973 and post-1973 photos, Dam Safety Bureau information, the National Inventory of Dams ([National Inventory of Dams \(army.mil\)](http://www.army.mil/nid)), and other sources. In some cases, it may be necessary to modify the reservoir type (offstream v. onstream).

If the reservoir tab is not “Water Court modified”, “Keep” or “Sustained”, place this information into the reservoir tab in TRIDENT and document on the review abstract pdf. If the reservoir tab is “Water Court modified”, “Keep” or “Sustained”, add the estimate to the review abstract PDF. Make note in the documentation that the reservoir record is Water Court modified, keep or sustained, and that DNRC’s estimations *have not* been implemented.

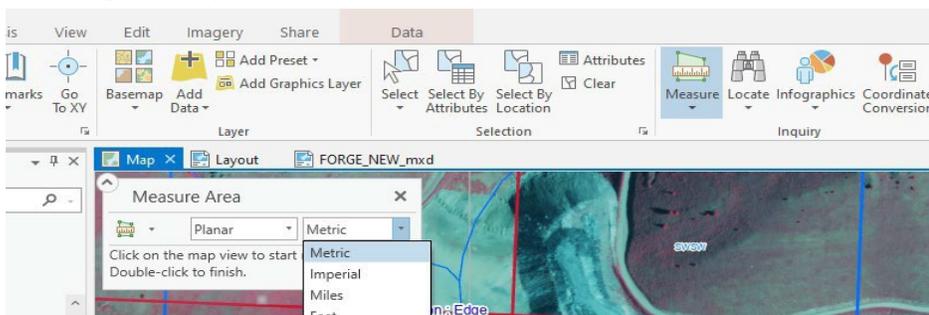
If you cannot see the reservoir to estimate the reservoir, add the following issue remark and do nothing more with the claim.

---

R100 EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED WITH AVAILABLE DATA.

---

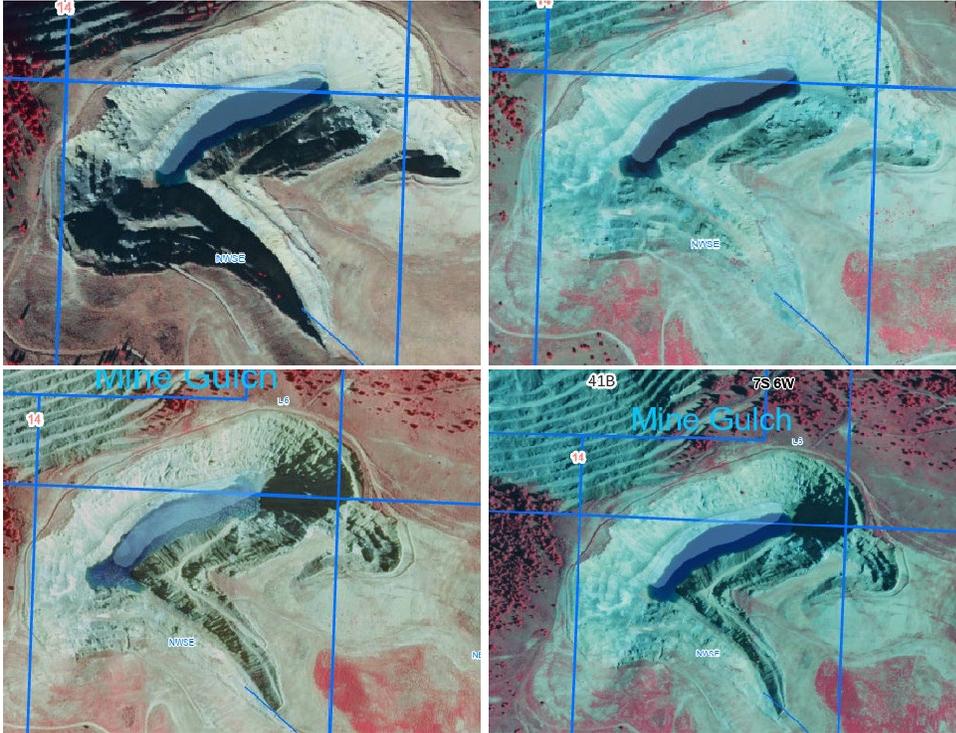
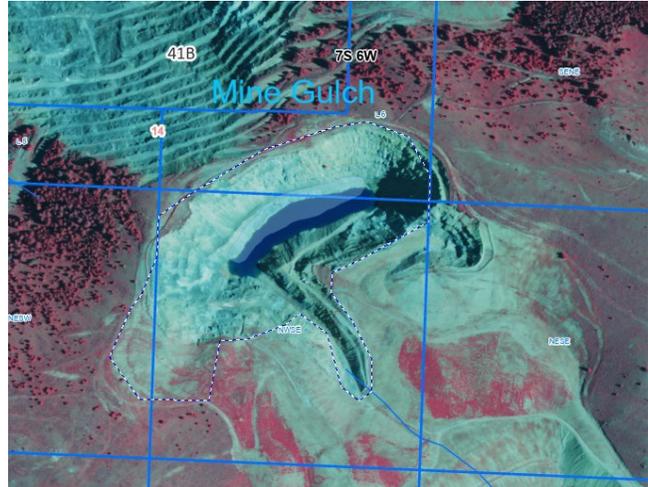
If you can see the reservoir, estimate the surface area and maximum depth using aerial photography. To estimate surface area, measure the full reservoir using the measure area tool. To estimate the depth, use your discretion to make an accurate estimate.



---

<sup>39</sup> Use 0.5 in equation if a pit.

Measure Area		
Planar Acres		
Result		
Area		
Area (ac)	Sum (ac)	
27.56	27.56	
Distance		
Segment (m)	Perimeter (m)	Sum (m)
79.24		



Add the following information remark if any elements were estimated. List each estimated element.

---

R56 THE CAPACITY, DAM HEIGHT, MAXIMUM DEPTH, AND SURFACE AREA HAVE BEEN ESTIMATED BY DNRC.

---

Add the following information remark if any reservoir information is obtained from another source (i.e., Army Corps or Dam Safety Bureau).

---

R76 SEE THE ARMY CORPS INFORMATION IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA.

---

If the claimant makes contact and provides any reservoir information: Implement the claimant's information, add the information remark below, and send the reservoir worksheet to the file. The element should remain coded as modified by rule.

---

R75 SEE THE RESERVOIR WORKSHEET IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA.

---

If the reservoir is “Water Court modified”, “Keep” or “Sustained”, **do not** add the R56, R75, or R76 to the claim.

It is appropriate to use the R56 information remark in combination with either the R75 or R76 information remarks when DNRC estimates supplement information provided by the claimants. All letters for the basin are sent at the end of the completion of the reexamination of the basin.

If the reservoir record is “Water Court modified”, “Keep” or “Sustained”, **do not** add an R56 or P88 remark. The DNRC will not modify the reservoir record, therefore these remarks are not applicable. Depending on information in the claim file, R76 or R75 remarks may be appropriate.

Once the capacity is estimated, check to see if the volume is excessive for the capacity.<sup>40</sup> If the volume is greater than 2.5 times the capacity of the reservoir, add a V40 issue remark, **unless the volume is “Water Court modified”, “Keep” or “Sustained”**.

---

V40 THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 3.0 TIMES THE CAPACITY OF THE RESERVOIR.

---

---

<sup>40</sup> This step does not apply to claims without a quantified volume, State owned stock claims, mining, or water spreading claims.

Next, change the period of diversion to the same as the period of use, add a **P168**, and remove the P164. Change the period of diversion element in Trident to *Modified by Rule*. Period of diversion was not an element on the original claim forms.

---

P168 THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

---

P161	P166	Period of Diversion	P164	P168	WC Mod / Sustained
Remove unless there is a period of diversion issue remark on claim.	Remove unless there is a period of use issue remark on claim.	Change to match the period of use unless WC modified, keep or sustained.	Remove unless period of diversion is WC modified, keep or sustained.	Add if period of diversion/use is not WC modified, keep or sustained.	<b>If period of diversion is WC modified, keep or sustained, do nothing.</b>

Surface Area	Max Depth	Dam Height	Capacity	R40
Estimate using ARC or other sources.	Estimate using ARC or other sources.	Max depth + 3 feet for freeboard.	Surface area (X) Max Depth (X) 0.4 or 0.5 if Pit	Dam extends into another 1/4
R56	P88	R76/R75	R80/R81	V40
Add if you Est. any of the above.	Add if you made ANY changes to Res.	Add if Res. Est are found from Claimant or Other Sources	Add if the Dam appears washed out in aerial photos or claim file info.	If claimed volume is 2.5 or greater times the capacity of the reservoir.

#### All Other Non-Reservoir, Non-Pit Claims, Including Natural Lakes

Check to ensure that the Period of Diversion matches the Period of Use and has the following information remark in Trident:

---

P164 STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

---

# XV. FISH, WILDLIFE, & RECREATION INDEX

## OVERVIEW AND PROCESS:

As a part of the Water Court’s Reexamination Order dated December 14, 2012, the Court ordered the reexamination of the flow rate and volume elements for all Fish and Wildlife, Wildlife, and Recreation claims. The subsequent order regarding Fish and Wildlife, Wildlife, and Recreation claims, dated April 17, 2013 (Appendix, G), sets the standard for the flow rate and volume elements of these claims. This memorandum summarizes the process of examining the flow rates and volumes for claims with a purpose of Fish and Wildlife, Wildlife, and Recreation, as directed by the order. Please refer to the supplemental order issued April 17, 2013, if additional clarification is needed.

However, this order does not supersede the 2012 Order’s directive that DNRC should not modify any previously litigated elements. If this procedure would modify an element or remark that has been litigated, do not modify the element or remark. **Litigated elements always remain the same.**

The Fish & Wildlife Index is broken down into 6 categories, each category is done differently depending on the diversion means.

- ◆ Category 1: Claims diverted without a reservoir. These claims would have the means of diversion as spring box, developed spring, diversion dams, headgates, wells, pumps, gravity flow, pipeline, wildlife direct from the source, or any right using a man-made diversion resulting in a measurable flow rate, excluding reservoirs.
- ◆ Category 2: Claims diverted with an on-stream reservoir.
- ◆ Category 3: Claims with off-stream reservoir and off-stream man-made pits.
- ◆ Category 4: Instream flow claims including undeveloped springs.
- ◆ Category 5: Inlake Claims
- ◆ Category 6: Pothole Lakes

## CATEGORY 1. CLAIMS DIVERTED WITHOUT A RESERVOIR.

### Rule 29(B)(1)

Typical category 1 claims: spring box, developed spring, diversion dams, headgates, wells, pumps, gravity flow, pipeline, and wildlife direct from the source.

“RULE 29(b). Guidelines for claims with a diversion but without a reservoir. The flow rate and volume guidelines for the following types of “other uses” claims within a basin or subbasin, involving a diversion but not involving a reservoir, will be:

- 1) All “other uses” except mining, fire protection, municipal, agricultural spraying.

- a) The flow rate guideline will be the capacity of the diversion and conveyance system using information in the claim and other data gathered by the department.
- b) The volume guideline will be identified as that which appears reasonable and customary for the specific purpose using information in the claim and other data gathered by the department.”

### Examining Flow Rate

If the capacity of the diversion and conveyance system cannot be confirmed or there is no information regarding capacity of the diversion and conveyance system in the claim file, add the following issue remark:

---

F80 THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM CANNOT BE DETERMINED AND THE FLOW RATE REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

---

Remove the standard remark and reinstate the claimed flow rate back in and add the F80 issue remark regardless of documentation.

If information supporting the flow rate exists in the claim file and supports the flow rate, leave the flow rate unchanged and unremarked. If information supporting the claimed flow rate is received from the claimant, remove the above issue remark from the claim.

Under Rule 29(g)(ii), the flow rate or volume of Filed and Use rights can be reduced with the presence of supporting documentation. This does not apply to claims with a Decreed historical type of right. If the flow rate or volume is reduced, mark the element as ‘Rule, Modified By’ in the data base and add the appropriate information remarks to Trident:

---

F32 THE FLOW RATE OF THIS CLAIM HAS BEEN REDUCED TO THE GUIDELINE OF 30.0 GPM. THE FLOW RATE MAY BE CONTESTED BY PROPER OBJECTION.

---

An F32 should be applied in a situation where information in the claim file clearly indicates that the flow rate should be less than what is claimed. For example, if the claimed flow rate exceeds the capacity of the diversion, it can be reduced to match the diversion capacity. This is an unusual circumstance. Confer with your Team Lead before applying an F32 or reducing a flow rate.

## Examining Volume

The volume guideline is what is “reasonable and customary” for a specific purpose. If information exists in the file showing that the volume is “reasonable and customary”, leave the volume unchanged and unremarked. Add the following issue remark if the file lacks information supporting the volume:

---

V150 THE VOLUME OF THIS CLAIM CANNOT BE DETERMINED FROM AVAILABLE INFORMATION, AND VOLUME REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

---

Remove any Runoff remarks on the claim.

If there is NO claimed Flow Rate, add an F170 Issue remark.

As always there are exceptions to the rules, if the flow rate or volume has been Water Court modified, leave it as-is.

## CATEGORY 2. CLAIMS DIVERTED WITH AN ON-STREAM RESERVOIR.

### Rule 29(c)

Ensure that the means of diversion is a dam for the corresponding POD. If not, change the means of diversion to the dam, modify the origin by rule, and add a P88 remark.

“RULE 29(c). Guidelines for claims with reservoirs. The flow rate guideline and volume guideline for other uses claims with reservoirs will be as follows:

- (1) for “other uses” claims involving only water from onstream reservoirs, a flow rate guideline will not be identified, and a flow rate will not be decreed. The following remark shall be added to the water right abstract: Example:

---

FF007 A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

---

## Examining Flow Rate

No flow rate will be decreed for all Fish and Wildlife, Wildlife, and Recreation claims from an on-stream Reservoir. Ensure that the means of diversion is a dam and run Standards in

the water rights Trident. Standards will remove the flow rate and add the following information remark:

---

FF007 A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

---

### Examining Volume

When the volume is 15 acre-feet or less, leave as claimed and do not remark. When the volume is greater than 15 acre-feet, the volume guideline is storage capacity<sup>41</sup> plus the estimate of evaporation. Leave the volume unchanged and unremarked if it is less than or equal to the guideline. See the DNRC Water Rights Claim Examination Manual Exhibits for reservoir evaporation estimate. If the volume exceeds this guideline, check the claim file for information justifying the volume. If the volume is justified, leave the volume as claimed and unremarked. If the volume is not justified and exceeds the guideline, add the following remark:

---

V155 CLAIMED VOLUME EXCEEDS CAPACITY OF RESERVOIR PLUS EVAPORATIVE LOSSES. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

---

**Do not remark volume for decreed rights with a decreed volume.** A V155 should only be added to non-decreed rights or decreed rights with no decreed volume. Additionally, a V155 should *replace* a V40 (unless the V40 was added by the Water Court) that was added by standards.

Calculating storage volume and estimating evaporation should be done by a specialist working on the Reservoir Index. The reservoir index should be completed prior to this one. Go to the review abstract in the basin folder to see the reservoir specialist's findings.

### CATEGORY 3. CLAIMS DIVERTED WITH OFF-STREAM RESERVOIRS AND OFF-STREAM MAN-MADE PITS.

#### Rule 29(c)

Per Water Court even if you can confirm the flow rate, we are to remove the standard remark reinstate the claimed flow rate back in and add the F80 issue remark regardless of documentation.

---

<sup>41</sup> Refer to the findings in the reservoir index for capacity.

- ◆ Remove any Runoff remarks on the claim.
- ◆ If there is NO claimed Flow Rate, add an F170 Issue remark.

### Examining Flow Rate

The flow rate examination of off-stream reservoirs and man-made pits is the same process as Category 1 above, **except** you will always add the F80 when you reinstate the flow rate.

### Examining Volume

The volume examination of off-stream reservoirs and man-made pits is the same process as Category 2 above. Follow the instructions for Category 2.

## CATEGORY 4. INSTREAM FLOW CLAIMS (INCLUDES UNDEVELOPED SPRINGS)

How to Examine Flow Rate and Volume: The guideline for the flow rate and volume for instream claims is the minimum amount necessary to sustain the specific purpose. In the absence of evidence substantiating flow rate and volume, leave the flow rate and volume as claimed (add claimed flow rate or volume if missing) and add the following issue remark:

---

V145 A GUIDELINE FOR THE FLOW RATE AND VOLUME OF THIS CLAIM CANNOT BE DETERMINED FROM AVAILABLE INFORMATION, AND FLOW RATE AND VOLUME REMAIN AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE AND VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE AND VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

---

If information substantiating the flow rate and volume exists in the claim file or is obtained from the claimant, leave the flow rate and volume unchanged and unremarked. If the volume is a litigated element, leave as-is and do not add a V145.

## CATEGORY 5. IN LAKE CLAIMS

The examination of the flow rates and volumes of in lake claims is the same process as Category 2, above. Follow the instructions under Category 2.

## CATEGORY 6. POTHOLE LAKES

How to Examine Flow Rate: Not covered by rule; a flow rate for claims in this category will not be decreed. The flow rate will remain blank, and no standard remark applied.

How to Examine Volume: Since pothole lake claims are not covered by Rule, the volume will be decreed as claimed and no standard examination remarks applied.

# XVI. LATE CLAIMS INDEX

## OVERVIEW

By Order of the Montana Supreme Court, the final deadline for filing a statement of claim was April 30, 1982. Failure to file a statement of claim by this date established a conclusive presumption of abandonment (See §§ 85-2-221 and 226, MCA). However, in 1993, the Montana Legislature amended the statute to allow late filings until July 1, 1996. Claims filed after April 30, 1982, but on or before July 1, 1996 are considered "late claims." Late claims are subordinate to valid, timely filed claims, and certain permits, in accordance with § 85-2-221(3)(f), MCA and are subject to certain terms and conditions pursuant to §§ 85-2-221(3), 85-2-222 and 85-2-225, MCA. In addition, since several decrees were issued prior to the amendment allowing late claims, some late claims were not examined and were not included in several decrees. Therefore, all late claims in basins for which a Temporary Preliminary Decree or a Preliminary Decree was issued, and late claims were not examined, should be subject to DNRC examination so they can be included in the decrees.<sup>42</sup>

The Water Court Order Addressing Reexamination, dated December 14, 2012, directs DNRC to review the examination of late claims in reexamination basins. (Appendix, B) **Late claims that have been previously decreed would get a reexamination version and would be part of the reexamination process. Late claims that were not previously decreed need a full examination completed.**

The 2012 Order on reexamination (Appendix A) orders that *all* late claims not issued in a previous decree be examined by DNRC. Since these late claims need to be brought up to the standards of the 2005 Supreme Court Rules *and* the subsequent court orders, all late claims not previously decreed will receive a full examination.

## PREPARING THE INDEX

### The Index Will Be Prepped by Team Leads

To examine the late claims most efficiently, it will be necessary to sort the late claims by decree status. If a claim has been issued in a decree, it will be subject to normal reexam procedures. From here, it is easiest to sort the remaining claims by ownership; this will allow one specialist to examine groups of claims that share an owner. The index should also include a column listing the adjudicated elements identified by the Water Court. From here, you may mark "complete" next to a line once you finish that claim.

## THE EXAMINATION OF LATE CLAIMS

Examine non-decreed late claims according to the instructions detailed in the claim **examination** manual. Also refer to the Special Provisions: Late Claims chapter in Section XI.C

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<sup>42</sup> Most late claims not included in a Temporary Preliminary Decree will have received a basic examination in compliance with the examination standards at the time they were performed.

of the claim examination manual concerning the correct late designation as either: A, B, or exempt<sup>43</sup>. Late claim A, B and late exempt claims are all treated the same. **Make any examination changes to the original version in Trident<sup>44</sup>**. Amendments to non-decreed late claims may be processed differently. Please contact the Quality Control Coordinator or the Adjudication Supervisor for guidance.

To examine a claim, begin by printing or downloading an examination worksheet from the claim in TRIDENT. From there, complete the worksheet according to the guidance in the Claims Examination Manual. As soon as you finish examining each late claim in one ownership, send a claimant contact letter with a 60-day response period (template in appendix M). During these 60-days, the claimant may contact you to resolve outstanding issues.

Keep in mind that non-decree claims are still within the control of DNRC, so you have a greater capacity to modify/amend elements based on the claimant contact. **However**, some late claims may have been involved in a Water Court Case. In some instances, an element of a late claim may be water court modified, sustained, or keep.

**Do not make changes to Water Court modified elements or remarks.** If you need to modify a litigated element, add an issue remark instead.

#### Element Origins:

Due to Trident issues, elements in late claims may be set as “decreed” even though the claim has never been included in a decree. Other origin inaccuracies may exist as well. These origins need to be fixed.

At the start of reexamination in a basin, the Adjudication Program Supervisor will send a list of non-decreed late claims to the Water Court. The Water Court will return a list of all the adjudicated elements in that list of claims. Your team lead should add these to your index. Any element flagged as adjudicated by the Water Court should have a “sustained” origin (make sure the element is as the Water Court set it).

Fix the origin for any non-adjudicated element to “claimed” or “modified by rule” (whichever the origin should be).

#### Reminders:

- ◆ Run standards at the end of your examination.
  - ◆ In instances where standards should not apply (such as retaining the claimed flow rate/volume on a fish & wildlife claim), make sure the origin is marked “keep/claimed” or “keep/modified by rule” to prevent standards from overriding the correct element.
- ◆ Always enter the examiner information for the claim: your name, the dates you started and finished the examination.

---

43 [Rule 36(c), W.R.C.E.R.].

44 There should not be a reexam version for non-decreed late claims. If you encounter one of these that does have a reexam version, contact your team lead.

- ◆ Make all applicable examination maps, as outlined in the 2013 manual.
  - ◆ FORGE in ArcPro should come pre-loaded with the layers and map templates.
  - ◆ The Exempt Claim exam manual also has helpful resources for mapping in ArcPro.
  - ◆ Irrigation claims need 3 maps: claimed acreage map (on USGS topos), examination map (often on 1979 USDA aerial photos), and a WRS map (on WRS aerial photos).

### SPLIT LATE CLAIMS

You will run into situations where a late claim that needs to be examined was split. The during reexamination, DNRC will examine the original claim (pre-split) as though it was whole. Since the split has already been approved and implemented by either the Water Court or the DNRC, the specifics of a split will not be re-hashed. You will *not* re-process or re-evaluate the split itself. The split versions of these water rights will be decreed as if they were independent water rights.

For the parent right:

- ◆ First, create a “SPLIT” version of the water right in Trident. The split version will reflect the right post-split.
- ◆ The Original Version will reflect the right pre-split. Change the elements in the original version to reflect the claim as it was pre-split.
- ◆ Examine the original (pre-split) claim according to the original instructions.
- ◆ Copy any issue/information remarks that you added to the original version to the split version.
- ◆ If the split was processed by the DNRC:
  - ◆ Make sure standards are applied in the split version.
  - ◆ If elements like the flow rate were specified to be a certain value, make sure that the specified value is retained.
- ◆ If the split was processed by the Water Court:
  - ◆ All elements and remarks in the split version are considered sustained. Do not modify elements, apply standards<sup>45</sup>, or change origins.
- ◆ Make sure your documentation clearly explains that the original (pre-split) right is being examined.
- ◆ Generate **two** review abstracts. One reflecting the pre-split results of your examination; make sure this is clearly labeled “pre-split” in your documentation. The second reflecting the post-split right with the examination results

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<sup>45</sup> Still click “run standards” in Trident. Just make sure the origin for each element is marked “sustained” or “keep” so that standards are not actually applied. Standards must still be “run” even if they aren’t “applied” so that summary checks will still indicate that the right has been examined and standardized.

incorporated. **Send the second version to the claimants since this is the version that will ultimately be decreed.**

For the child right(s):

- ◆ The original version should reflect the right post split.
- ◆ If the split was processed by the DNRC:
  - ◆ Make sure standards are applied.
  - ◆ If elements like the flow rate were specified to be a certain value, make sure that the specified value is retained.
- ◆ If the split was processed by the Water Court:
  - ◆ All elements and remarks are considered sustained. Do not modify elements, apply standards<sup>46</sup>, or change origins.
- ◆ Add all issue/information remarks added during your examination to the child right version. (Except the R14 remark, the child right will receive the C4 remark).
  - ◆ If the issue remarks have language that has variables about split elements such as acreage, keep the remark as it would show up on the original (pre-split) claim.
- ◆ Make sure your documentation clearly explains that the original (pre-split) right is being examined.
- ◆ Generate **two** review abstracts. One reflecting the pre-split results of your examination; make sure this is clearly labeled “pre-split” in your documentation. The second reflecting the post-split right with the examination results incorporated. **Send the second version to the claimants since this is the version that will ultimately be decreed.**

*For an example of the processing and documentation specific to split late claims, please refer to the review abstracts for 76G 215012-00 and its child rights in the 76G basin folder.*

#### DOCUMENTATION:

Documentation for late claims examination will primarily be done on reexamination worksheets. Because the examination is more intensive, the documentation must be more thorough. You may either print and fill out the worksheet by hand, or you may complete the worksheet in Adobe-Pro.

Make sure to label your supplemental information with the applicable information:

- ◆ DNRC Supplemental Doc
- ◆ Claimant Supplemental Doc
- ◆ Dates

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<sup>46</sup> Still click “run standards” in Trident. Just make sure the origin for each element is marked “sustained” or “keep” so that standards are not actually applied. Standards must still be “run” even if they aren’t “applied” so that summary checks will still indicate that the right has been examined and standardized.

- ◆ Photo ID nos.
- ◆ Other relevant information

Once you finish your examination, scan and compile all your documentation into a single PDF. The order should be as follows:

1. Claim Examination Worksheet
2. Supplemental Documentation
3. Claimant Contact Letter
4. Review Abstract
5. Examination Map

Once your PDF is complete, save a copy to the Late Claims folder inside the Basin Folder with the following naming convention: 76X 1234-00. This is the same folder that you will save your maps to, with the specific naming conventions outlined in the 2013 manual.

Save another copy of the PDF to your office's records upload folder with the following naming convention: ADJUDICATION UPDATE^STATEMENT OF CLAIM^76X^1234^00^^. This will upload your document to the scanned documents record for the right.

Then, print off a copy of the PDF and send it to central records to be added to the physical claim file at Iron Mountain. When you send it, clearly indicate the water right number and that the file has already been scanned and uploaded.

**To: WRB Records Management**  
updated 10-2018

Process	Series	Type of Document – <i>circle one</i>	
Scan	ADJ	File	Paper
Scan	NA	File	Paper
Scan	CHG	File	Paper
Scan	PR	File	Paper
Scan	Suspended	File	Paper
	CSKT		

Instructions: Please file w/ 76X-1234-00 at new storage. Already scanned!

Return to \_\_\_\_\_

File at New Storage

From: Office Name Date: Date

# XVII. VMIS REMARKS INDEX

## OVERVIEW

The purpose and basis of this index is to give extra attention to the Volume Issue remarks during reexamination. The VMIS index consists only of volume issue remarks. This index includes the regular duties of the Remarks Index. (REFER TO REMARKS SECTION) However, there are additional checks which should be made in this index. These additional checks include but are not limited to volume guidelines which have changed over the years.

## REMINDERS

Have an up-to-date Remark Codes Sheet saved on your desktop, you will be using this a lot. This can be found in TRIDENT, under the Remarks section.

**Non-consumptive remarks:** Any remark which talks about the use of the water right being non-consumptive or largely non-consumptive should be replaced with the V20 remark.

**VM3Z:** Archived free-text volume issue remark. Attempt to find a canned remark which you can fit the remark text into. If there are no canned remarks, you can use a free-text remark.

It is critical that you remember to implement the change in TRIDENT. It can be easy to get caught up in the importance of documenting on PDFs and spreadsheets that it can be easy to forget to implement the change in Trident. A helpful way of tracking this is to add a column in your index labeled “Y/N TRIDENT”. The moment after you make a change in TRIDENT, record a “Y” in the “Y/N TRIDENT” column. If no changes are required, you can put an “N”.

## STEP-BY-STEP

### Preparing the Index

You will receive the VMIS index (excel sheet) from your Team Lead or will be directed to where to find it in the Basin Data folder. The index may have been touched up by the Team Lead before giving it to you, but maybe not, so it’s a good reminder that you can adjust the index to make it more comfortable to work in. You can delete things, such as columns showing the “Remark Type” which is “ISSUE” and will be “ISSUE” for all remarks in this index, so you could delete that column. Other things that are helpful to delete are Withdrawn, Terminated or Dismissed Water Rights. We do not have to touch these. These water rights you can delete but be careful to not be too gung-ho with deleting things, if you become careless it can be easy to accidentally delete an active water right and if you don’t catch that error as you do it, it can be easy to never discover again. Add a “Specialist Comments” column to your index, this is where you’ll put your comments when complete a line. Once you have the index formatted to your liking, it’s time to start.

## Beginning: Active remarks

When you open your excel sheet to start, you can begin right at the top. Identify the water right number and remark code in the first line, and let's imagine you run into your first canned active remark. It could be a V45 or V95 remark as seen below:

---

**V45:** THE CLAIMED VOLUME APPEARS INADEQUATE FOR THE CLAIMED PURPOSE.

**V95:** NO VOLUME HAS BEEN CLAIMED.

---

Since these are active entirely canned remarks, if the formatting looks correct you can mark it as "OK" in the spreadsheet and move on. Now let's say you encounter a V50 or V70 remark as seen below:

---

**V50:** NO VOLUME HAS BEEN CLAIMED. THE VOLUME GUIDLEINE FOR THIS AREA IS 1.0 ACRE-FEET PER ACRE.

**V70:** THE CLAIMED VOLUME EXCEEDS THE 1.0 ACRE-FEET GUIDLEINE FOR THIS PURPOSE. ITS ACCURACY CANNOT BE CONFIRMED DUE TO LACK OF DATA.

---

Since V50 and V70 remarks have a variable, you should go into the scanned documents and attempt to find the section in which that volume guideline was calculated. It is possible that between the time of original examination and reexamination, how the DNRC calculates a certain guideline may have changed. If you find that these guidelines have changed, recalculate the guideline acre-feet per year and adjust the remark so the number is accurate.

Or it is possible that a number was entered incorrectly by the original examiner, so it's important to go back and confirm that the number in the remark is the same as in the scanned documents. If the numbers are still accurate, you can mark the line as "OK" in the index and move on. If guidelines have changed or a number was entered incorrectly, and the remark requires a modification, go through the process of documenting this change on the Review Abstract PDF (REFER TO DOCUMENTATION SECTION). Also remember to document the change in the index. Finally, remember to implement the change in TRIDENT.

### Updating Archived remarks

When working through this index it is inevitable that you will encounter some archived volume issue remarks. These are issue remarks which may or may not be correct, it will be your responsibility to both determine the accuracy of the remark and if you determine the remark does indeed belong on the claim it is your responsibility to find the appropriate active remark code. The most common archived remark encountered is the VM3Z free-text remark seen below:

---

**VM3Z:** "XXXXXXXXXXXXX".

---

Since this is a free-text remark, anything could be written in it. If you deem the remark to be appropriate on the claim, it is your responsibility to find a canned text remark which you can fit the archived remark into. If there are no canned remarks which can be used, you can use the VMIS free-text remark however we try to avoid using free-text remarks whenever possible.

### VM3Z to V20 remark

When you encounter a VM3Z remarks, it's possible that the remark could refer to the "non-consumptive" nature of the water right. In cases in which you see the use of a water right described as "non-consumptive" you can replace the VM3Z *issue* remark with a V20 *information* remark. This is considered a little strange since typically we want to keep issue remarks as issue remarks and same with information. This VM3Z to V20 change is an exception to that. V20 remark seen below:

---

**V20:** THE USE OF THIS WATER APPEARS TO BE LARGELY  
NONCONSUMPTIVE.

---

# XVIII. RM REMARKS INDEX

## OVERVIEW

RM1Z are legacy, internal remarks. These remarks are not public-facing and were intended to convey information between specialists. Most of these remarks are no longer relevant to the claims themselves. During reexamination, this index is intended to screen a basin for existing RM1Z or RM remarks. Most can be deleted, and some can be incorporated into a public-facing remark.

## PROCESS

The team lead will deliver an index of all RM or RM1Z remarks in a basin. Once you receive the excel sheet, add a “comments” column. In this column, document any changes you make and document those same changes on the review abstract pdf. Every RM1Z will either be:

- ◆ Deleted (the majority).
- ◆ Incorporated into a public-facing remark.
- ◆ Left alone (the minority).

## Examples:

If a RM or RM1Z has wording along the lines of “file in Trudy’s office”, it should be deleted in TRIDENT because the information is no longer relevant. Document the deletion on the review abstract PDF.

If a RM or RM1Z has wording along the lines of “POD located in sec 26”, the information should be checked and incorporated into the POD elements of the claim.<sup>47</sup> Document any changes on the review abstract PDF. Delete the RM or RM1Z once their information is conveyed elsewhere.

If a RM or RM1Z remark has wording along the lines of “ON 09/29/88, THIS WELL WAS DEEPENED FROM 86 FEET TO 103 FEET. A NOTICE OF COMPLETION OF GROUNDWATER DEVELOPMENT (FORM 602) WAS RECEIVED BY THIS DEPARTMENT ON 10/11/88. A FIELD INVESTIGATION REVEALED FILE NO. C069845-00 TO BE UNNECESSARY. IT HAS BEEN TERMINATED. SEE FIELD INVESTIGATION REPORT IN THIS FILE DATED 10/23/89.”, it should be left alone. This information cannot be applied to any other reexam element, but it could still have important bearing on the claim itself.

---

<sup>47</sup> In this example, you should confer with the specialist working on the POD index. Don’t automatically assume something is correct.

# XIX. CGI REMARKS INDEX

## OVERVIEW

The purpose of the Computer-Generated Information (CGI) Remarks index is to ensure standard remarks that are generated by running standards, have been added to the Flow Rate and Volume elements of a claim.

Chapters 5, 7, 8, 9, and 10 in the Water Right Claim Examination Manual will tell you about the guidelines for each purpose and why each C.G.I. Standard Remark Code is used. Applying CGI or Standard remarks was not part of the December 12, 2012, Reexamination Order (Appendix, B), but is necessary to make sure the standards set in later orders are implemented.

Typically, when standards are run on a claim, Trident will add standard remarks. However, there are instances when this doesn't happen. We can add the standards remarks to a claim manually by following the instructions below. **Do not run standards on these claims**, they must be entered into the Description Fields under the Flow Rate and Volume elements, manually.

Running standards more than one time on a claim will result in duplicate information and issue remarks that standards apply. We do not want duplicate remarks on claims, and the only other review which will catch duplicate remarks on claims is the Summary Review.

Note that for the purposes of this index: *quantified* means a flow rate or a volume described numerically in CFS/GPM or Acre-Feet.

### Preparing the Index

You will receive this index in excel format. Before you start analysis, add a COMMENTS column, a PDF column, and a TRIDENT column to your index for documenting your work.

- ◆ Documents your changes in the COMMENTS column.
- ◆ Add a Y or N to the other two columns when you complete the task (documenting changes on the review abstract and entering changes into Trident, respectively).

Using these column additions will help you remember to document the PDF and enter the information into Trident.

- 1) Sort your spreadsheet according to:
- 2) Element for Review (Flow Rate or Volume) then by,
- 3) Water Right Number then by,
- 4) Purpose

Now you are ready to start processing the water rights on your index.

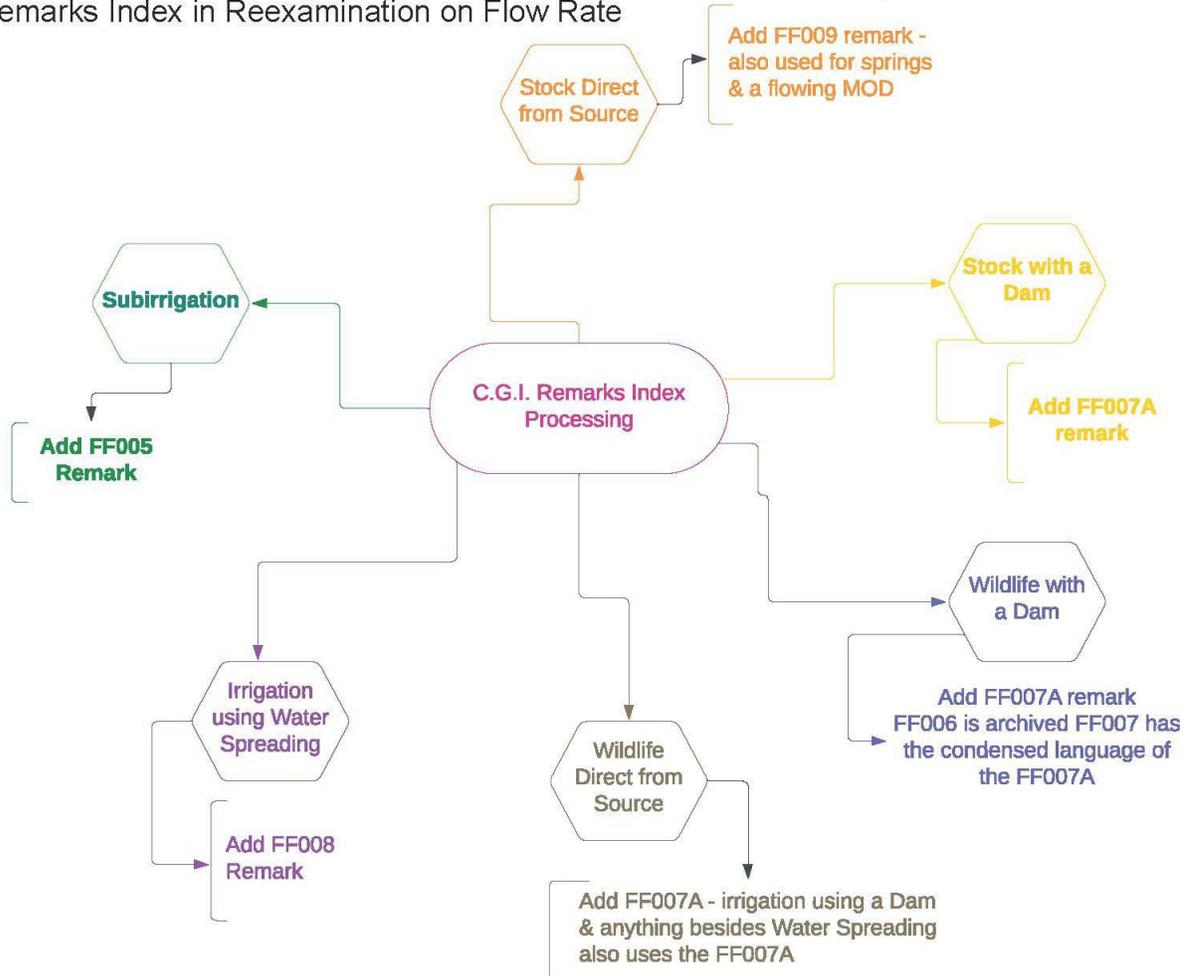
## FLOW RATE

### Steps for Entering Flow Rate According to Means of Diversion

- 1) If there is a quantified Flow Rate in the element box, remove it and remove the Flow Rate Unit (CFS/GPM).
- 2) Change the Origin to *Modified by Rule*.
- 3) Click on the edit button next to Flow Rate Description and select correct remark code. Double click.
- 4) Document the change on the review abstract PDF and on your index.

Here is a visual of the kind of diversions you will run into:

Visual Aid for Processing C.G.I. (Computer Generated Information) Remarks Index in Reexamination on Flow Rate



### Flow Rate Remark Codes for Means of Diversion

Livestock Direct from Source	FF009
Livestock with a Dam	FF007A
Wildlife Direct from Source	FF009
Wildlife with a Dam	FF007A
Irrigation using Water Spreading	FF008
Sub Irrigation	FF005
Irrigation using a Dam and anything other than water spreading.	FF007

---

**FF009** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**FF007A** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**FF008** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF DIRECT FLOW WATER SPREADING.

**FF005** NO FLOW RATE HAS BEEN DECREED FOR THIS NATURAL OVERFLOW METHOD OF IRRIGATION.

---

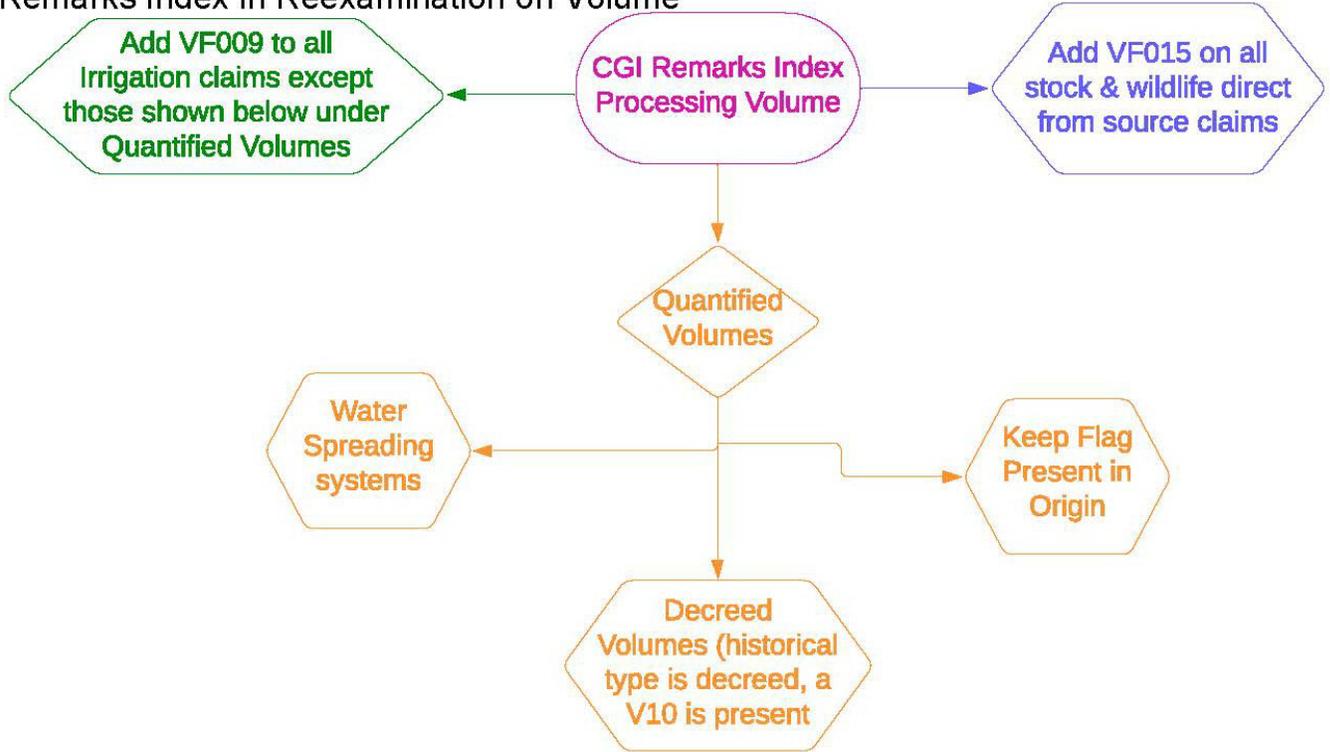
## VOLUME

### Steps for Entering Volume According to Means of Diversion

- 1) If there is a quantified Volume in the element box, remove it.
- 2) Change the Origin to *Modified by Rule*.
- 3) Click on the edit button next to Volume Description and select correct remark code. Double click.
- 4) Document the change on the review abstract PDF and on your index.

Here is a visual of the kind of diversions you will run into:

Visual Aid for Processing C.G.I. (Computer Generated Information) Remarks Index in Reexamination on Volume



Volume Remark Codes for Means of Diversion

<u>Livestock Direct from Source</u>	<u>VF015</u>
<u>Livestock with a Dam</u>	<u>VF015</u>
<u>Wildlife Direct from Source</u>	<u>VF015</u>
<u>Wildlife with a Dam</u>	<u>VF015</u>
<u>Irrigation using a reservoir (consumptive)<sup>48</sup></u>	<u>Quantified</u>
<u>Irrigation using a reservoir (flow-through or non-consumptive)</u>	<u>VF009</u>
<u>Irrigation using flood or sprinkler</u>	<u>VF009</u>
<u>Irrigation – Water Spreading</u>	<u>Quantified</u>
<u>“Keep Flag” on Volume</u>	<u>Do nothing.</u>

<sup>48</sup> These claims will have a V10 remark present.

---

**VF015** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**VF009** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

---

### ADDITIONAL NOTES

#### CGI for Fish and Wildlife Claims

These missing CGI remarks *should* be covered on the Fish and Wildlife Index. See the Fish and Wildlife order in the reexam guidebook and the Fish and Wildlife Index instructions on how to process these types of purposes.

#### For Sustained and Modified by Court Origins

**Do not** modify a volume or flow rate with an origin that is “keep”, “sustained”, or “modified by water court”. The 2012 reexamination order makes clear that previously litigated elements are not to be altered by DNRC during reexamination. Subsequent orders setting these standards do not supersede the directive to leave litigated elements alone.

If the element is missing, check the previous decree abstract and the scanned documents. If no volume/flow rate was claimed, none was decreed, the Water Court left it blank, and no standards apply, add a G10 remark. **This only applies in situation where the flow rate/volume is missing from every step in the process up to this point.**

---

G10 THE **VOLUME/FLOW RATE** IS MISSING.

---

# XX. BLM INDEX

## OVERVIEW

The Water Court has directed DNRC to apply elements of the 2009 Bureau of Land Management (BLM) order to the reexamination process (APPENDIX, C). During reexamination efforts, identifying reserved rights in three categories is required by the Water Court. The Water Court will then address the underlying issue of reserved type of right after second basin decrees are issued. These claims are identified by querying for type of right “reserved” and querying historical type of right “reserved”. If the query identifies a private owner with a reserved water right. Research needs to be conducted to see if BLM transferred the rights through the ownership update process.

The order also directed DNRC to place a specific issue remark on RESERVED claims filed by the BLM based on Public Water Reserve No. 107. Even though there were specific basins named in that order, it should apply statewide.

All RESERVED BLM claim should be listed on this index.

## SETTING UP THE INDEX

You will initially receive the index in excel format. Begin by sorting the index according to the following order:

- 1) Priority Date, then by
- 2) Water Right Number, then by
- 3) Ownership

Before you start analysis, add a COMMENTS column, a PDF column, and a TRIDENT column to your index for documenting your work.

- ◆ Document your changes in the COMMENTS column.
- ◆ Add a Y or N to the other two columns when you complete the task (documenting changes on the review abstract and entering changes into Trident, respectively).

Using these column additions will help you remember to document the PDF and enter the information into Trident.

## PROCESSING THE INDEX

### Identify Reserved Claims Under Water Reserve No. 107

If a claim has the priority date of **April 17, 1926, and owned by BLM**, you will add the P720 remark.

---

**P720** THIS CLAIM IS BASED ON PUBLIC WATER RESERVE NO. 107 CREATED BY EXECUTIVE ORDER DATED APRIL 17, 1926. IT IS NOT CLEAR IF THIS CLAIMED RIGHT IS A FEDERAL RESERVED WATER RIGHT, BUT IF IT IS, IT IS NOT CLEAR WHETHER THE PURPOSE CLAIMED WAS CONTEMPLATED BY SUCH A RESERVATION, OR IF THE AMOUNT OF WATER CLAIMED IS THE AMOUNT NECESSARY TO FULFILL THE PURPOSE OF THE RESERVATION.

---

Follow the instructions below to complete this index.

- 1) In TRIDENT, add the P720 to the remarks tab.
- 2) Document the changes to the review abstract PDF.
- 3) Add the comment and verification of PDF and Trident input in the Index.

If BLM was the original filer and sold the property to a private entity.

In the instance where the land has been sold to a private party, you will add the P730 remark. Often federal and state lands are bought and sold to private parties (non-government). When this happens on a claim that meets the RESERVED status and the PRIORITY DATE of April 17, 1926, requirement, follow the SAME STEPS ABOVE, but use the remark code P730. This remark is like the P720 remark, but it identifies the transfer of ownership (see page 2 of the BLM Court Order).

---

**P730** THIS CLAIM WAS ORIGINALLY FILED AS A RESERVED RIGHT BY THE UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF LAND MANAGEMENT, AND WAS BASED ON PUBLIC WATER RESERVE NO. 107 CREATED BY EXECUTIVE ORDER DATED APRIL 17, 1926. THIS CLAIM WAS SUBSEQUENTLY TRANSFERRED TO A PRIVATE ENTITY. IT IS NOT CLEAR IF THIS CLAIMED RIGHT IS A FEDERAL RESERVED WATER RIGHT, BUT IF IT IS, IT IS NOT CLEAR WHETHER THE PURPOSE CLAIMED WAS CONTEMPLATED BY SUCH A RESERVATION, OR IF THE AMOUNT OF WATER CLAIMED IS THE AMOUNT NECESSARY TO FULFILL THE PURPOSE OF THE RESERVATION, OR WHETHER THIS CLAIM MAY BE TRANSFERRED TO A PRIVATE ENTITY AND RETAIN THE ELEMENTS ASSOCIATED WITH A RESERVED RIGHT, OR WHETHER THE ELEMENTS OF THIS CLAIM MUST BE MODIFIED TO REFLECT ITS HISTORICAL BENEFICIAL USE.

---

If the BLM Claim is RESERVED but has a priority date OTHER THAN April 17, 1926.

In the instance the claim is RESERVED, but there is a different priority date, you will add the P734 remark. If you come across this situation, again, follow the above instructions, but use the P734 remark code (See page 2 of the BLM Court Order).

---

**P734 THIS CLAIM WAS FILED AS A RESERVED WATER RIGHT. IT IS NOT CLEAR IF THIS CLAIMED RIGHT IS A RESERVED WATER RIGHT, BUT IF IT IS, IT IS NOT CLEAR WHETHER THE PURPOSE CLAIMED WAS CONTEMPLATED BY SUCH A RESERVATION, OR IF THE AMOUNT OF WATER CLAIMED IS THE AMOUNT NECESSARY TO FULFILL THE PURPOSE OF THE RESERVATION.**

---

# XXI. LIVESTOCK DIRECT W/ P88 INDEX

## OVERVIEW

The purpose of this index is to review Livestock Direct claims including Point of Diversion and Place of Use location and legal land descriptions for the selected basin for accuracy and consistency. This task consists of reviewing all ArcGIS and Trident data for accuracy and consistency.

This index is part of the original 2012 Reexamination Order to address the standardization and identification of SOURCE NAME, POINT OF DIVERSION, MEANS OF DIVERSION, DITCH NAME, RESERVOIR RECORD, AND PLACE OF USE to all claims in decrees issued prior to March 28, 1997. These elements have been identified that, if not subject to further review, may cause confusion for water users and could lead to problems for enforcement of Water Court decrees. Knowing the accurate locations and common or shared points of diversion and sources, as well as proper ditch names, will help eliminate unnecessary confusion among water users when a Water Court decree is enforced.

## PROCEDURE

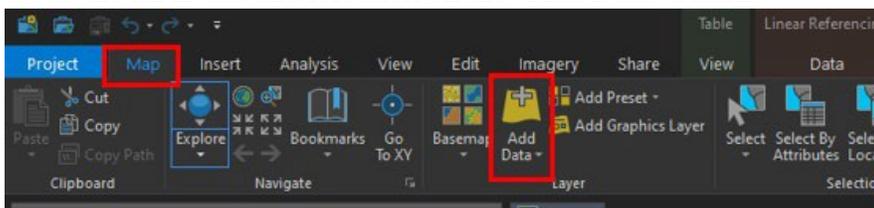
For this process you will need access to ArcGIS Pro, Water Rights Information System (TRIDENT)

### SETTING UP THE INDEX/SUBSET:

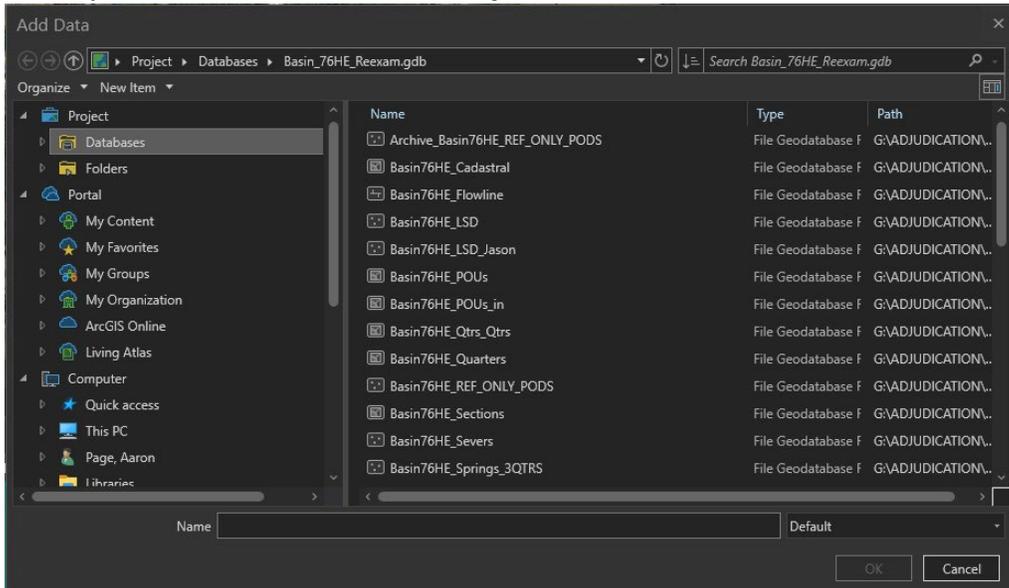
Open the Basin ArcGIS Pro Project off the share drive.

In ArcGIS Pro:

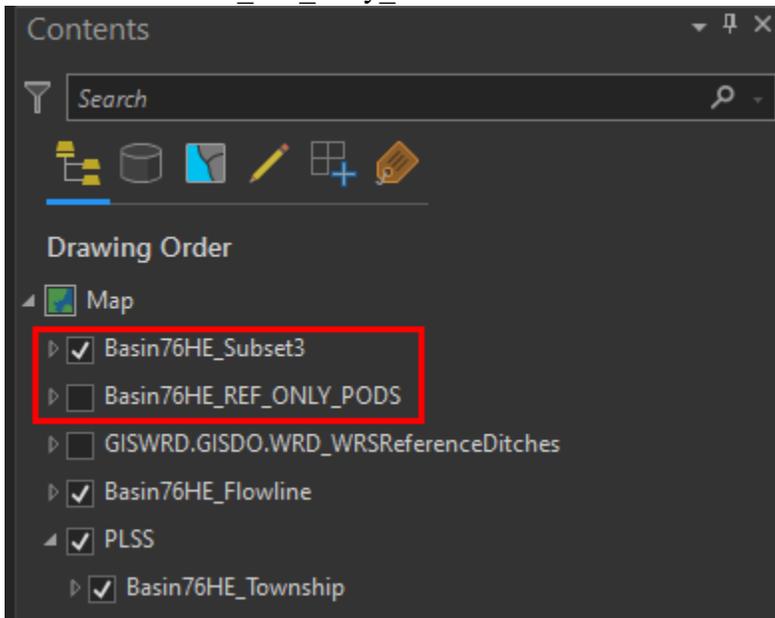
- ◆ Save the project using “SAVE AS” and save to your desktop with your index/subset and your initials.
- ◆ Go to the MAP tab and left click on the “Add Data” button



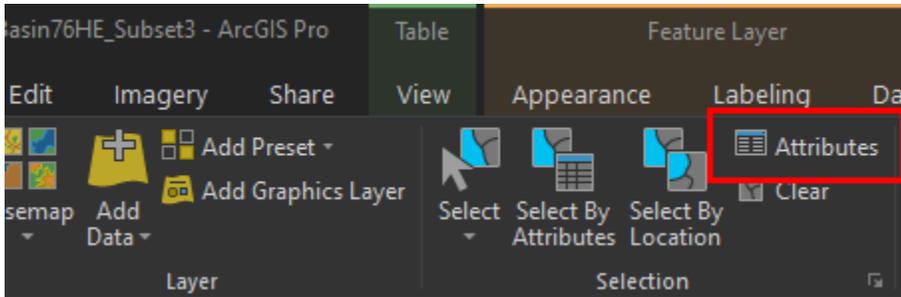
- ◆ Select your index/subset under the Project -> Tridents folder and click OK to add



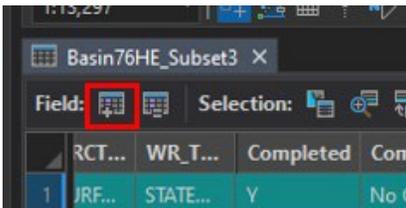
- ◆ The left side menu labeled “Contents”, check the box for the index/subset added and uncheck the Basin\_Ref\_Only\_PODS



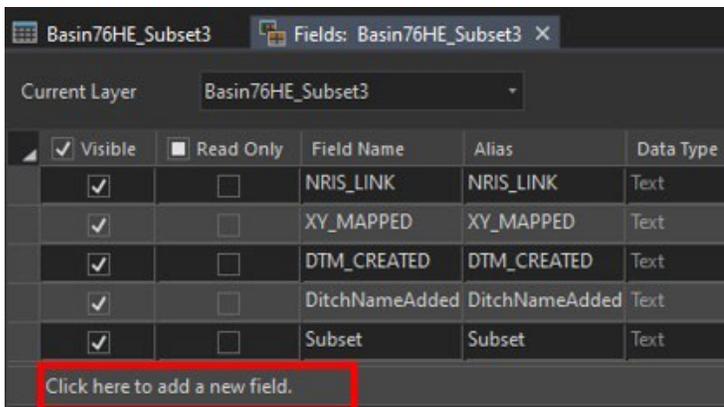
- ◆ Click to highlight the added Index/subset and then click on the “Attributes” on the upper menu bar under the MAP tab.



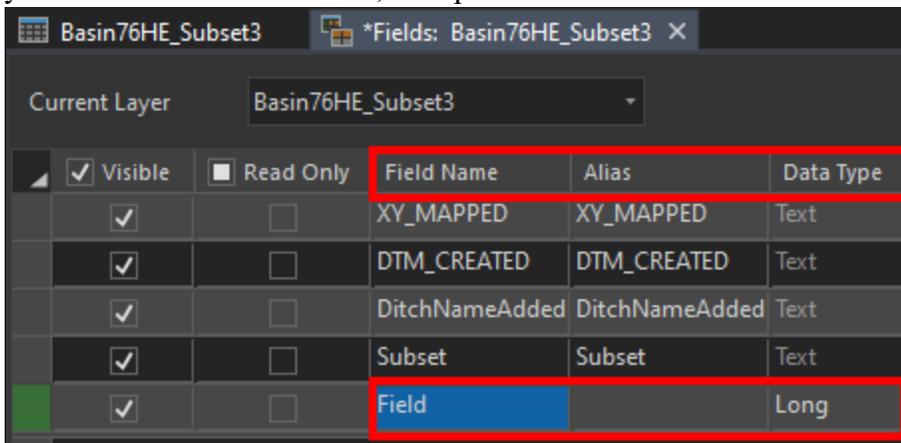
- ◆ If the “Completed” and “Comments” columns are missing, then do the following:
- ◆ Click on the “Add Field” Button,



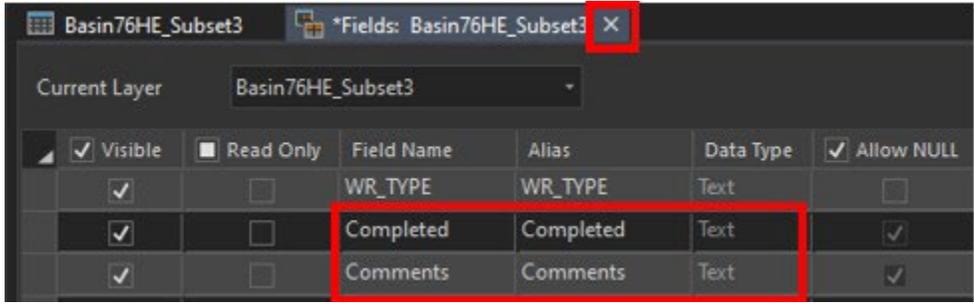
Then click on the “Click here to add a new field”



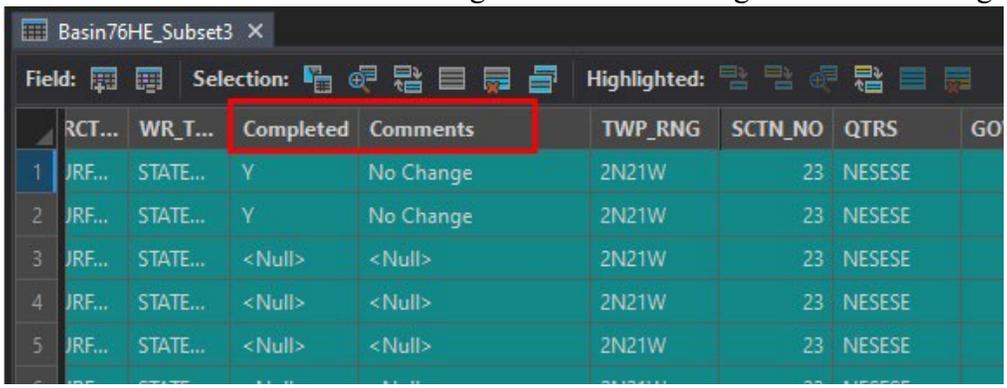
and enter “Completed” in the Field Name and Alias columns and change Date Type to “Text”, then click the “Click here to add new field” again and repeat for Comments. Now you have added two columns, Completed and Comments.



When finished click the “X” to exit the “Add Field” tab.



- ◆ On the Attribute tab you will find the two new columns at the end, you can left click and hold the name of the column and drag it to the left to bring it closer to the beginning.



## REVIEWING

DO NOT review or change any water right number that is a Spring with 3 quarter sections on ArcGIS or in TRIDENT.

Review all:

- ◆ Source Names are correct and agree with Topo Map and Water Resource Survey.
- ◆ Means of Diversion is correct – LIVESTOCK DIRECT FROM SOURCE.
- ◆ Ditch Names are correct (if a ditch is listed)
- ◆ Reservoir Records are correct (if a reservoir is listed)
- ◆ Point of Diversion points to verify all legal land descriptions match the location on the map and verify the Place of Use legal land description matches the Point of Diversion Legal land description. Points do not need to be moved if they are within the legal land description. Legal Land Description can be 3 quarter sections, 2 quarter sections, 1 quarter section, or the entire section.

## DOCUMENTATION

Documentation happens in the Attribute table of ArcGIS Pro, in Trident, and on the Review Abstract PDF. Documentation for the Review Abstract and ArcGIS Pro Attribute table

should be very detailed with the What, Why, Who, and When. What did you change; why did you change it (include all resources used), who changed it; and when did you make the change.

If all elements are good, put a “Y” in the “Completed” column of the ArcGIS Attribute table and move on to the next Water Right Number.

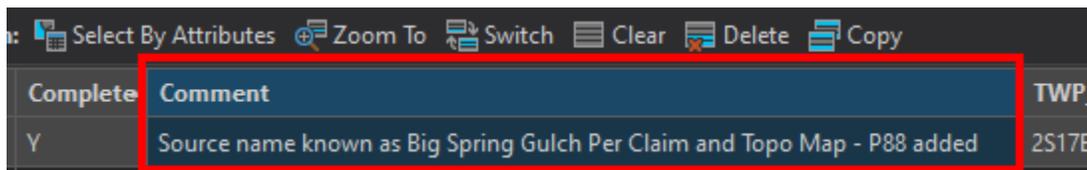
If there are any corrections needed:

### Documentation

- ◆ Add P88 remark (see below for P88 Remark instructions)
- ◆ Make the corrections needed. (Using the “Modified by Rule”)
- ◆ If you are unsure if you can make the changes or have question, contact the Quality Control Coordinator
- ◆ Remember to save the Review Abstract PDF after adding comments

### ArcGIS Pro

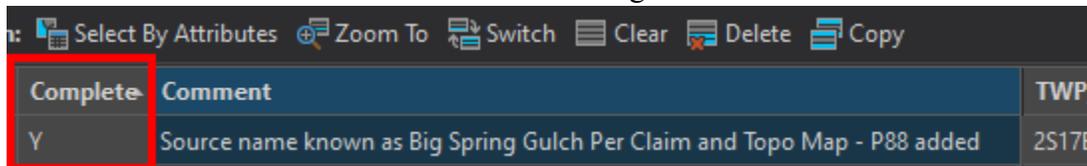
- ◆ Make corrections to the Map (moving points), if needed.
- ◆ Add a comment to the “Comment” column of the ArcGIS Pro Attribute table



The screenshot shows the ArcGIS Pro Attribute Table interface. The table has three columns: 'Complete', 'Comment', and 'TWP\_'. The 'Complete' column contains the letter 'Y'. The 'Comment' column contains the text 'Source name known as Big Spring Gulch Per Claim and Topo Map - P88 added'. The 'TWP\_' column contains the value '2S17E'. A red box highlights the 'Comment' column header and the text within the row.

Complete	Comment	TWP_
Y	Source name known as Big Spring Gulch Per Claim and Topo Map - P88 added	2S17E

- ◆ Once all comments are documented, put a “Y” in the “Completed” column of the ArcGIS Attribute table and move on to the next Water Right Number



The screenshot shows the ArcGIS Pro Attribute Table interface. The table has three columns: 'Complete', 'Comment', and 'TWP\_'. The 'Complete' column now contains the letter 'Y'. The 'Comment' column contains the text 'Source name known as Big Spring Gulch Per Claim and Topo Map - P88 added'. The 'TWP\_' column contains the value '2S17E'. A red box highlights the 'Complete' column header and the letter 'Y' in the row.

Complete	Comment	TWP_
Y	Source name known as Big Spring Gulch Per Claim and Topo Map - P88 added	2S17E

- ◆ Once all the Water Right Numbers have been reexamined save the project
- ◆ Export the Livestock Direct subset.

### Things to Remember

- ◆ When adding the P88 remark, all a language should reflect what is written below. Be mindful and recheck what is typed in the text section of Trident, such as:
- ◆ Use of this remark are for modifications to SOURCE NAME, POINT OF DIVERSION, MEANS OF DIVERSION, DITCH NAME, RESERVOIR RECORD, AND PLACE OF USE only.

- ◆ Do not start the remark with “THE”.
- ◆ Correct terminology, Examples:
- ◆ MEANS OF DIVERSION – correct. DIVERSION MEANS – incorrect.
- ◆ POINT OF DIVERSION – correct. DIVERSION POINT – incorrect.
- ◆ No acronyms – POD, POU, MOD
- ◆ Check for correct use of WAS or WERE

---

P88 SOURCE NAME, POINT OF DIVERSION, MEANS OF DIVERSION, DITCH NAME, RESERVOIR RECORD, AND PLACE OF USE WAS/WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA COURT REEXAMINATION ORDERS. IF NO OBJECTS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

---

Use the full element titles in the remark variable, as shown in the gray box above. For example, type the words Point of Diversion instead of POD or just the word diversion.

Situations where a P88 is not necessary because a Trident error occurred are:

- ◆ Removing the extra or second “Unnamed Tributary of Unnamed Tributary of” the source name
- ◆ Modifying Livestock Direct from Source on Wildlife claims to Wildlife Direct from Source
- ◆ Copying springs, subirrigation, etc. from the 1st POD to the other POD IDs.

# XXII. INTERBASIN TRANSFER & MISBASINED CLAIMS INDEX

## OVERVIEW

In accordance with the December 9, 2022, Statewide Order Regarding Interbasin Transfer Claims (Appendix K) and the Supreme Court Claim Examination Rules, DRNC will identify interbasin transfers and misbasined claims. It is important to keep in mind that interbasin and misbasined claims are attributed based solely on the **point of diversion**. This means the basin will be indexed in the POD's basin and will only be included in the POD's basin.

A **misbasined claim** is when a claim is incorrectly designated to a basin that is not where the point of diversion lies. WRCER Rule 8(b): "Reviewing basin codes. Claims having diversions within a common drainage basin or subbasin will be identified with a common basin code. The basin code will be reviewed to confirm that the claim has been grouped in the correct basin. (1) If the department finds that a claim was omitted from a basin where a decree has been issued, the water court shall be notified. (2) If the department finds that a claim was omitted from a basin where a decree has not been issued, the department will change the basin code in the claim file and in the centralized record system."<sup>49</sup>

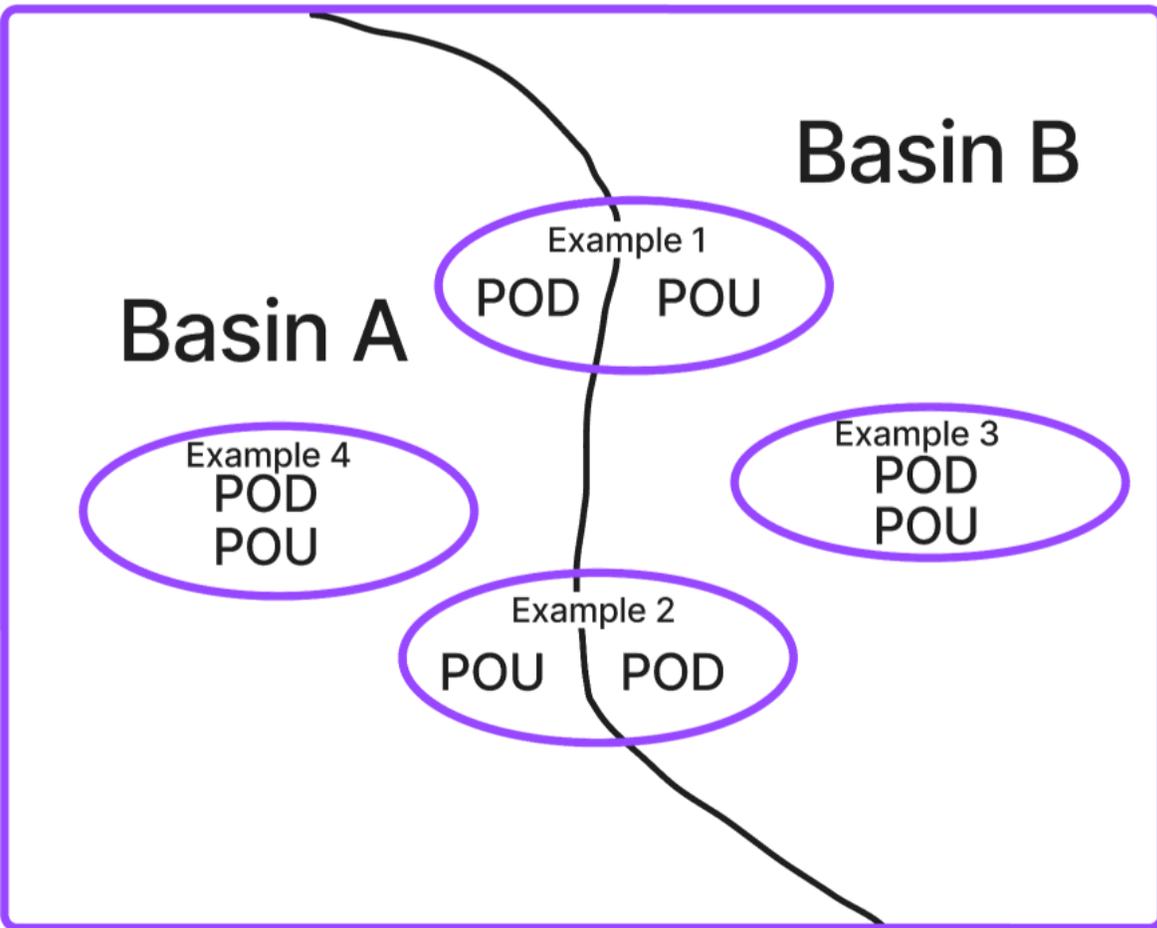
An **interbasin transfer claim** is "when the POD is in one basin and the place of use, or a portion thereof, is in another basin, an interbasin transfer shall be identified for the basin of the POU as well as the basin of the POD." (WRCER, Rule 8.c)

This index will examine POD's to see if a right falls into one of these four scenarios:

- 1) **Interbasin transfer.** The POD shows the water right properly designated as Basin A. The POU, being outside of Basin A, causes an interbasin remark to be applied.
- 2) **Misbasined claim and interbasin transfer.** The POD shows the water right to be incorrectly designated Basin A. This water right is a misbasin water right. You want to note location of the POU; as in this case, there is a misbasin water right that also has an interbasin remark necessary. This information would be contained in the memo to the Water Court requesting to reassign the water right to Basin B and noting it will have an IBT remark on the claim.
- 3) **Misbasined claim.** The POD shows this to be incorrectly designated to Basin A. This is a misbasin claim. The POU shows no interbasin remark is necessary. A memo to the Water Court will only request basin reassignment.
- 4) **No issue.** The POD shows this water right is correctly designated to Basin A. POU shows no interbasin relationship exists. No memo, no remarks.

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<sup>49</sup> Note, all basins have had a decree (76L and 76LJ are in the process of being decreed at the time of writing) so point 2 is not applicable. A memo will always be written to the Water Court if a misbasined claim is identified.



### PROCESS

In order to identify any potential interbasin transfers/misbasined claims, Trident administrator will create an index with the following remarks: T15, T21, TI, TI1Z, CIIS, CLIS, DE1Z, DE2Z, G32, G33, G34, G36, G971, GA2Z, GI3Z, GIIS, LC1Z, PL3Z, PLIS, TC2Z, T20, and T21. These remarks will flag any potential IBT/misbasined scenarios.

Using the water rights on that list, use GIS (ArcPro) to identify if any of the rights fall into one of the four scenarios above. If an interbasin transfer is identified, the claim will receive information remark. If a misbasined claim is identified, no remark will be added, but a detailed memo will be sent to the Water Court.

### DETAILED GIS PROCEDURES

The index is performed through visual checks of the basin using GIS. The detailed procedure is described here in the following pages.

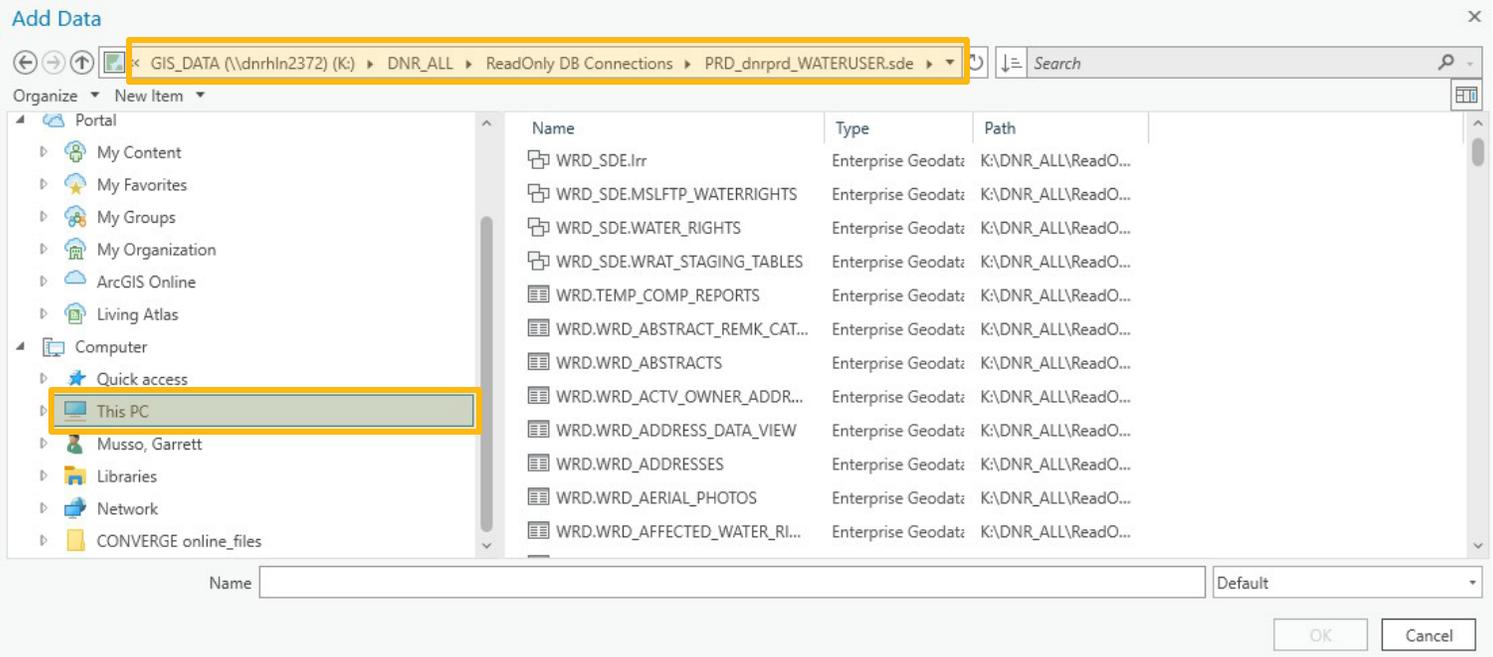
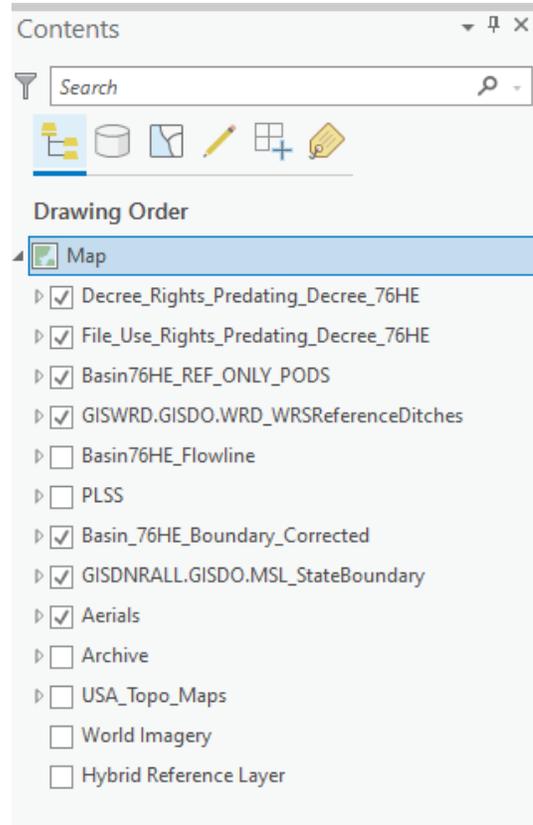
- Starting with the POU layer, if it is not under the archive area, you will need to use the “Add Data Key” and navigate to the [\\dnrhl2372](#) drive location and add this layer.



- The POU's are located here:

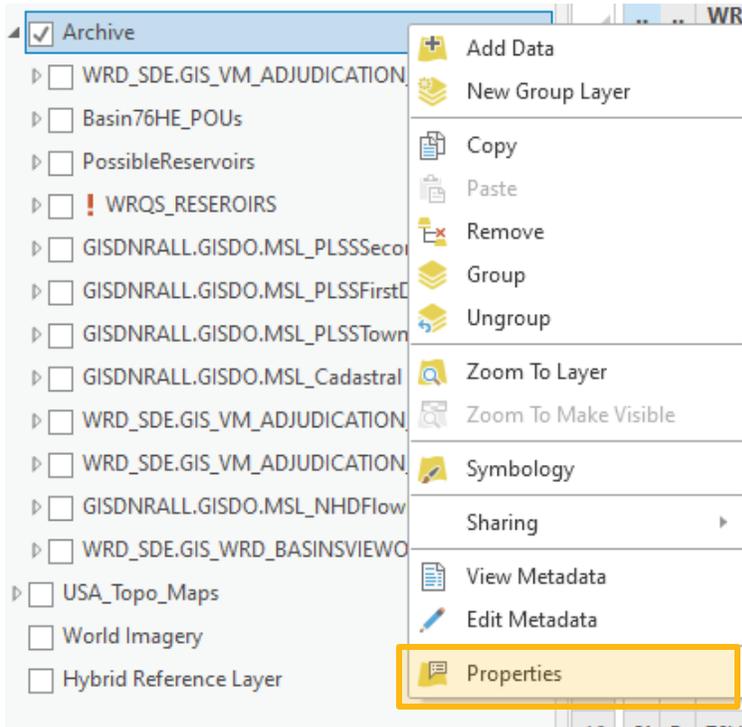
K:\DNR\_ALL\ReadOnly DB Connections\PRD\_dnrprd\_WATERUSER.sde\WRD\_SDE.GIS\_VM\_ADJUDICATION\_POUS

- To navigate in the “Add Data” pop-up: Use the “This PC”, add then navigate to the address above.

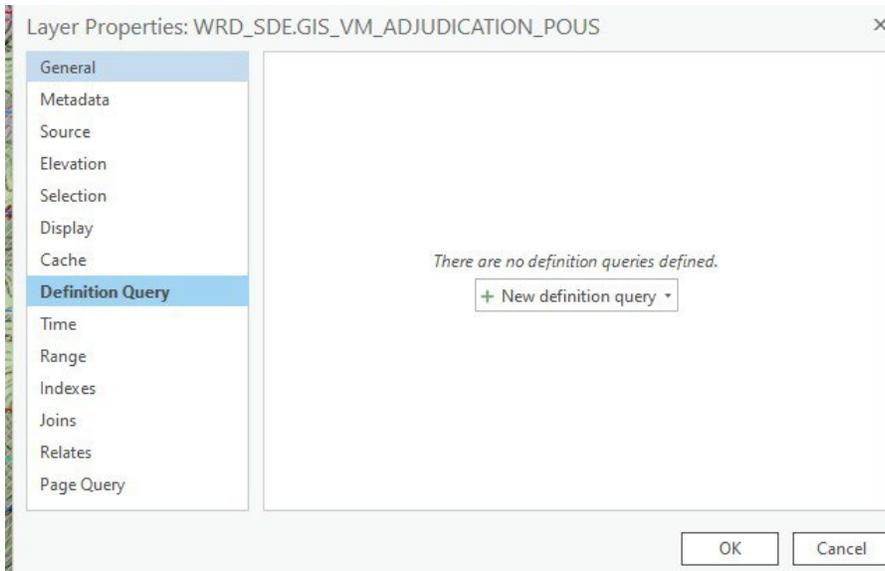


To set up this layer, you will first want to use a “definition query” to isolate the basin you are working on. Note: Some basins are subbasins and you will need to use the Subbasin field rather than the basin field as the attribute for your definition query. This is done by:

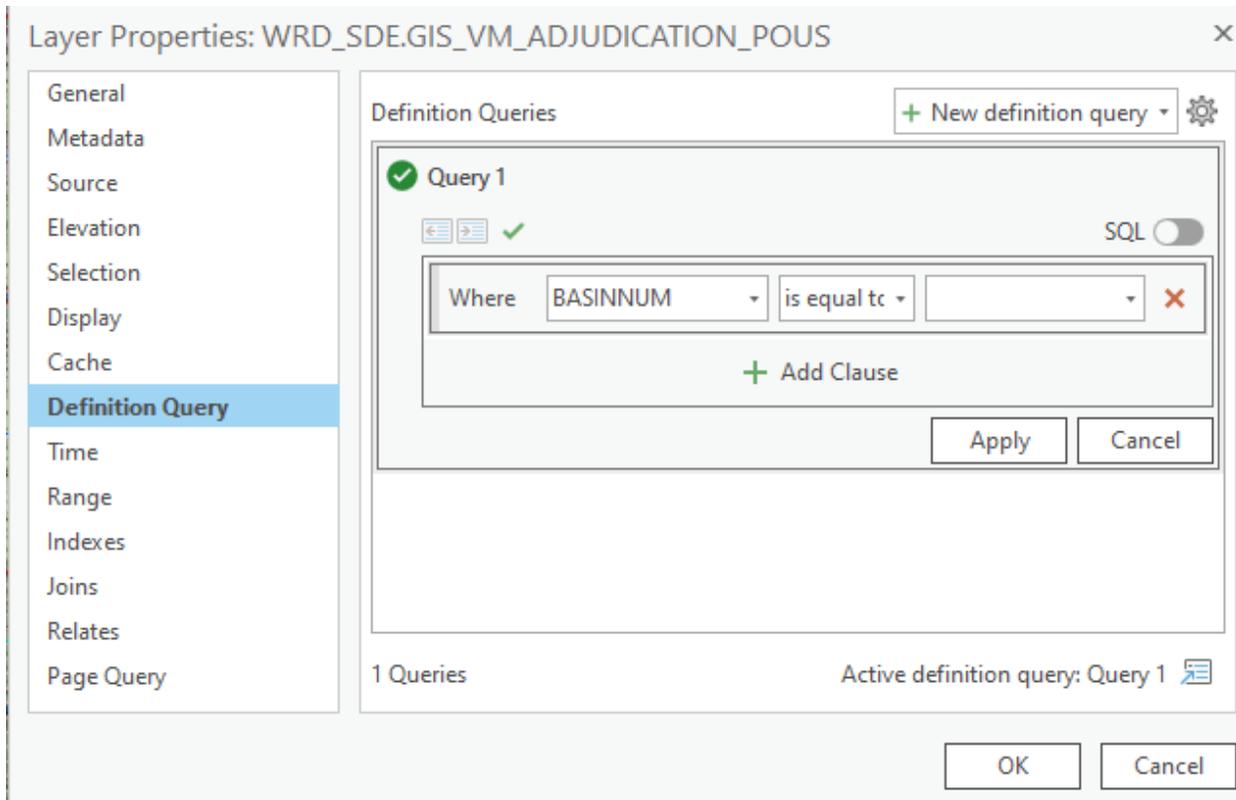
- ◆ Right click on the POU's layer to see the layer pop-up, chose “PROPERTIES”:



- ◆ Then click the “Definition Query” and then “+ New definition query” button:



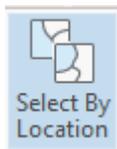
- ◆ Now add BASINNUM OR SUBBASINNUM to the “Where” field and type or use the drop box to identify your basin.



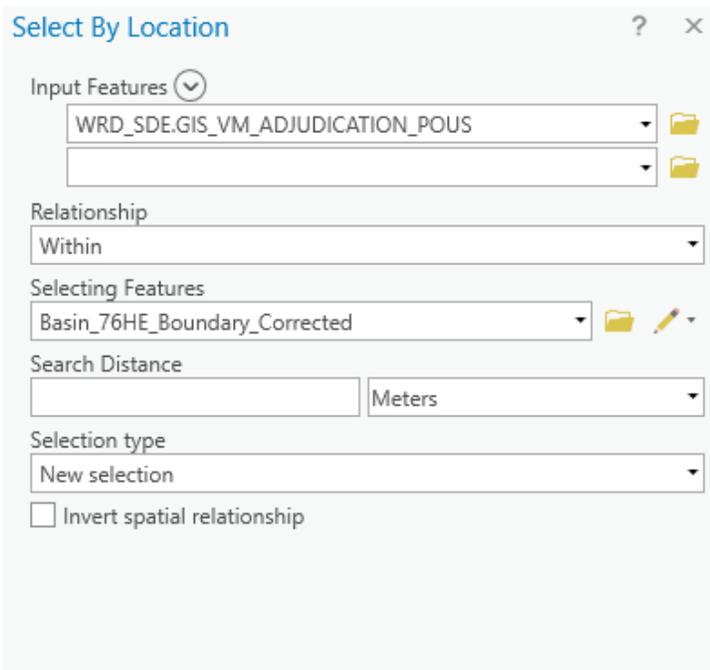
- ◆ Click “APPLY” first! Then OK.

Now check to see you only have POUs from your basin of choice by opening the Attribute Table by right clicking the POU layer and using the Layer pop-up and this time chose “Attribute Table” (rather than Properties).

Once you confirm your Definition Query is correct, you will want to isolate any POUs that are on the border or over the border that could be potential Interbasin transfers. To do this, use “Select by Location” button your ribbon.

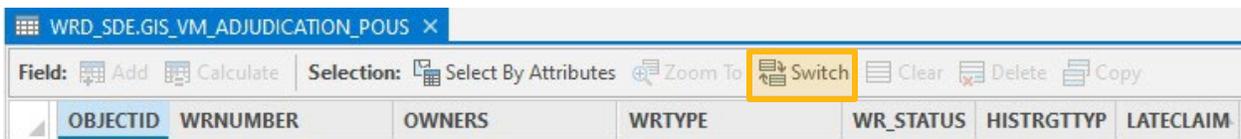


- ◆ You will then fill in the fields as such:

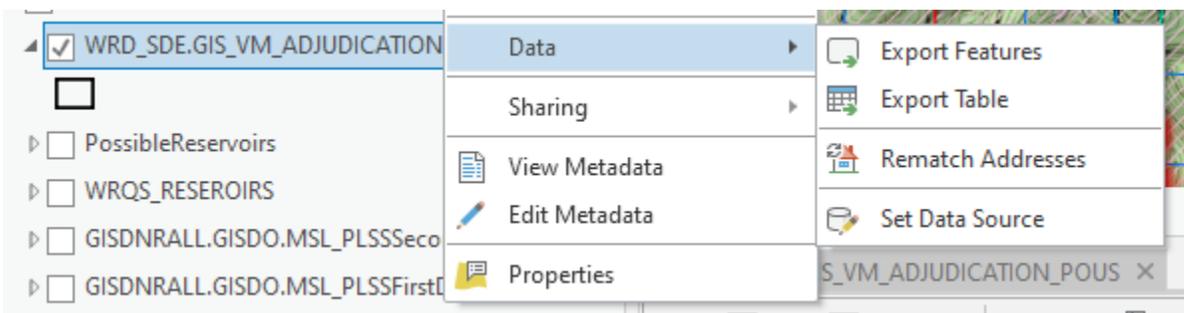


Click “Apply” at the bottom of this box. Note: you will get only those POUs that are within the basin boundary. You will want to use the basin boundary in the project so that you are only using that particular basin’s boundary. Be patient, it can a few minutes to run this query.

- ◆ Now, using the “Switch” Key, on the Attribute Table ribbon...



- ◆ You will now have all POUs that cross over the boundary into another basin. You want to export this data.
- ◆ Using the right click on the layer to get the layer’s pop-up, click on “Data”, click on “Export Features”.



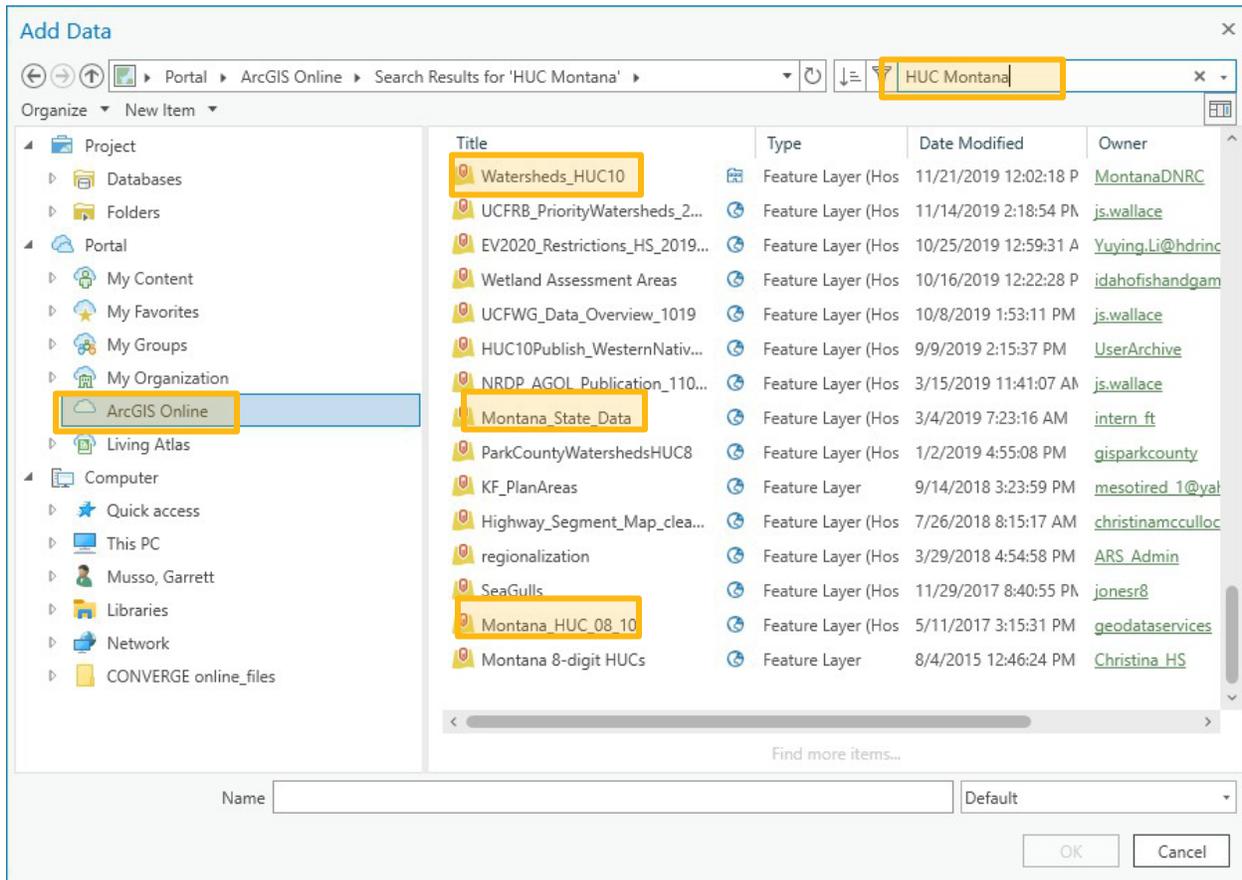
You can allow the default of the Output Location to stay and title this export something like: **Basin\_76HE\_POUs\_Out** indicating the basin, that it is POUs, and that the POU is

**located outside of the boundary.** Note: the name must have at least one letter at the beginning of the name and no existing spaces without an underscore between words.

- ◆ Highlight all the POUs in the new layer and then copy. Next, open an Excel spreadsheet.
- ◆ Paste these cells into your Excel spreadsheet so you can arrange them. Add a couple of additional columns. Set up can look something like this:

OBJECT	Shape	WRNUMBER	Comment	Ditch Name	HB110	Remark added
268	Polygon	76H 108845 00	IBT 2 with 76HA, Irrigation District			
665	Polygon	76H 107548 00	IBT2 with 76HA			IBT2
2417	Polygon	76H 107549 00	IBT2 with 76HA			IBT2
712	Polygon	76H 10170 00	IBT2 with 76HA			IBT2
1001	Polygon	76H 108734 00	IBT2 with 76HA			IBT2
4454	Polygon	76H 108735 00	IBT2 with 76HA			IBT2

When dealing with Misbasin and Interbasin: It's recommended to add the HUC (Hydrologic Unit Code) boundaries for Montana. Go to "Add Data" and navigate to "ArcGIS Online" and search for "HUC Montana". You may have to look at several different potential sources. **Watersheds\_HUC10** is good but if you need more definition of the area you are working in, you might have to use **Montana\_State\_Data**, opening that folder and choosing "HUC 12" if you need something more precise or if you need something bigger, "HUC 8" from that folder.



You will need to make sure water actually leaves the basin boundary (hydrologically). In these cases, your basin boundary will surprisingly not follow the HUC boundary, so make your map, then ask the Team Lead how to proceed with these gray area Water Rights that appear misbasin or interbasin.

- ◆ Check each Water Right and evaluate it.
  - ◆ Is it truly outside of the basin boundary?
  - ◆ Is it in two basins?

Does the POU (place of use), because of the 10-acre (or larger) legal land description, happen to extend out of the basin but the actual place of use does not - therefore this claim is not considered an interbasin claim. The actual place of use is established by examining the claimant's scanned map in their file.

TIP: You can work by highlighting the corresponding POD and POU in the attribute table, or you can alternatively use the definition query and isolate WR# POU's. Make sure you are using the same WR# for both so you can clearly identify the misbasin from the interbasin claims.

As you determine which claims are truly interbasin, you will add the appropriate remarks:

IBT1, IBT2, IBT3, or TI. Keep careful track. You will also be looking for any remarks that are already on so not to duplicate and to remove any remarks that are replaced by this IBT/TI remark.

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ITB1 THIS APPROPRIATION OF WATER TAKES WATER FROM THE MONTANA CREEK DRAINAGE (BASIN 41X) AND USES IT IN THE MONTANA RIVER DRAINAGE (BASIN 41Y).

IBT2 THIS APPROPRIATION OF WATER TAKES WATER FROM THE MONTANA CREEK DRAINAGE (BASIN 41X) AND USES IT IN THE MONTANA RIVER DRAINAGE (BASIN 41Y) AND THE COPPER RIVER DRAINAGE (BASIN 41Z).

IBT3 THIS APPROPRIATION OF WATER TAKES GROUNDWATER FROM THE MONTANA CREEK DRAINAGE (BASIN 41X). THIS USE MAY POTENTIALLY AFFECT WATER RIGHTS IN THE MONTANA RIVER DRAINAGE (BASIN 41Y).

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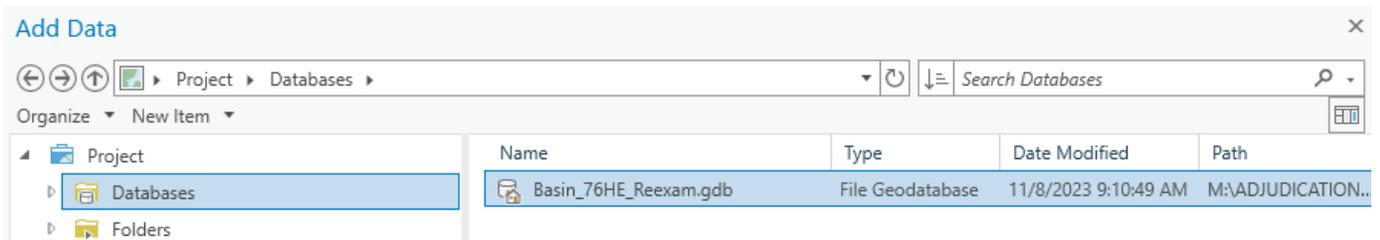
### MISBASINED CLAIMS

Using the "Final POD layer" from re-examination, you will need to build a layer of any of the misbasin PODs for your basin that are located outside the basin boundary, and any other

misbasin PODs from another basin that are actually located inside your basin’s boundary. So to do this, start with the completed re-examined PODs:

### Finding Misbasin PODs for Your Basin Actually Located Outside the Basin Boundary

“Final PODs layer” to your project from the geoTrident. The geoTrident will be the default if you open the “Tridents” field in the below screen shot. You will have to scroll and find the “Final PODs layer” within Trident.



Once added to your project, you will need to open the “Attribute Table” and perform a selection by location (as above), and then perform the “Switch” function on the attribute table ribbon for anything outside the basin boundary.

Again, copy and paste these POD’s into another tab in your Excel spreadsheet, naming it something like “PODs Out”. Give yourself additional columns for Notes, Final Decision, Sent to Water Court, and Completion Memo Sent.

### Misbasin Memos & Maps

All misbasin claims that have been previously decreed with require a memo and map to be sent to the Water Court. You will want to be very clear how they are out of the basin boundary. You will need to make maps for each memo and attach the abstract. No remarks are to be entered into Trident until the Water Court issues a ruling and they will determine what remarks will be added. You will only identify the claim and make the memo, with map and abstract, and send to the Water Court. Once Water Court reviews, they will issue a ruling back to the DNRC. The ruling will state what is to be done with the claim. Once you have met every item in the order, you will send a completion memo for that ruling to the Water Court These memos are sent to scanning to be added to the scanned files of the claim.

See example of the map.

Scale is set by what is needed, not all maps will maintain a 1:24,000 but do attempt to stay within reason. A 1:75,000 or 1:100,000 has been used if the need is there.

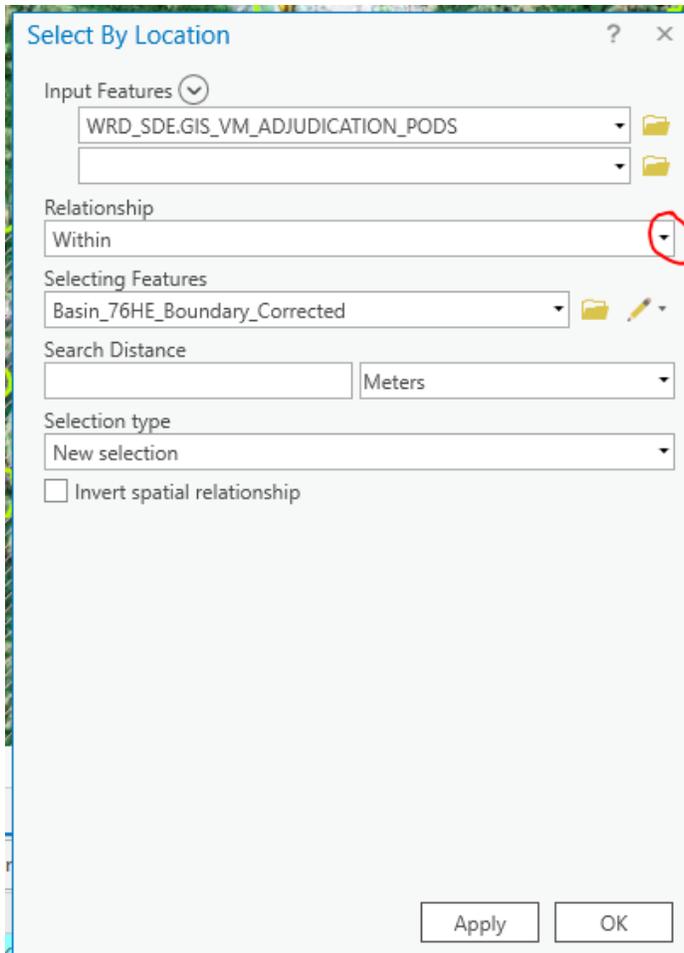
When making the maps, keep in mind that it should be clear and concise. I recommend using a definition query so only the water right you are dealing with shows on the map, no other water right should be showing.

### Finding Misbasin PODs from Adjacent Basin Actually Located in Your Basin

Now using the layer:

K:\DNR\_ALL\ReadOnly DB Connections\PRD\_dnrprd\_WATERUSER.sde\WRD\_SDE.GIS\_VM\_ADJUDICATION\_PODS

You want to look for any PODs that are coming into your basin from outside. A simple “Location” query can be performed to isolate those Water Rights that maybe coming in. In a simple location query, you will take the layer you are going to query, state within your basin’s boundary and click apply. You will use the carrot for the dropdown box to select “within.”



These outside water rights must be checked to see if they are active. Then make sure they are truly misbasin and discuss with the Program Manager on how to proceed. Questionable misbasin claims will be claims that are hydrologically in the basin but administratively outside the basin. These claims are at the discretion of the Program Manager as to if they will be ruled misbasin. Only those claims the Program Manager rules as misbasin will then be forwarded to the court. Example would be a livestock direct claim that has 5 PODS. 4 of the PODS are within the basin boundary on the same tributary waterway that the 5<sup>th</sup> is on; however, the 5<sup>th</sup> POD is outside of the basin boundary. Being the water belongs to the basin and is a tributary of the main waterway of the basin, this is not ruled misbasin. Another example would be a spring that

clearly flows by topo and by aerial into a tributary of the main waterway of the basin but due to basin boundary not following the HUC boundary, it appears to be out of the basin. The Water Program Manager will rule if we determine it misbasin or not according to the documentation you show. You will want to include the HUC lines on this documentation as well as supporting aerials to show where the water flows.

**Water Court Water Masters will ask that both the Water Master of your basin, and the Water Master of the adjacent interbasin/misbasin basin to be alerted.** Example: A 76N claim is showing up in 76C. The Water Master for 76N and for 76C may request both of them be put on the memo so that both are aware of the changes within their basins, especially if we have re-examination activities going on in both basins.

# XXIII. BASIN WIDE REEXAMINATION COMPLETE

## BASIN WIDE REEXAMINATION COMPLETE

The Team Leads will let the Adjudication Supervisor know when the reexamination work in a basin is complete. This reexamination work include:

- ◆ All Reexam Indexes are complete
- ◆ All Reexam Review Abstracts are scrubbed of cross out edits by the Team Leads
- ◆ QC Coordinator has approved the Reexamination Team's work
- ◆ All Review Abstracts and Reexam Indexes are transferred over to the Post-Exam Team's control.

Once this designation is made by the Adjudication Supervisor, the following changes take place:

- ◆ Reexam Teams can no longer make changes. The files will be locked from editing for everyone except the Post-Exam Team.
- ◆ The basin is locked to everyone except the Post-Exam Team.
  - ◆ This includes the TPS/SA, the entire ADJ Program, and Regional Managers. All DNRC Staff outside the Post-Exam Team need permission to make any Trident modifications without Bureau Chief approval.

# XXIV. APPENDIX

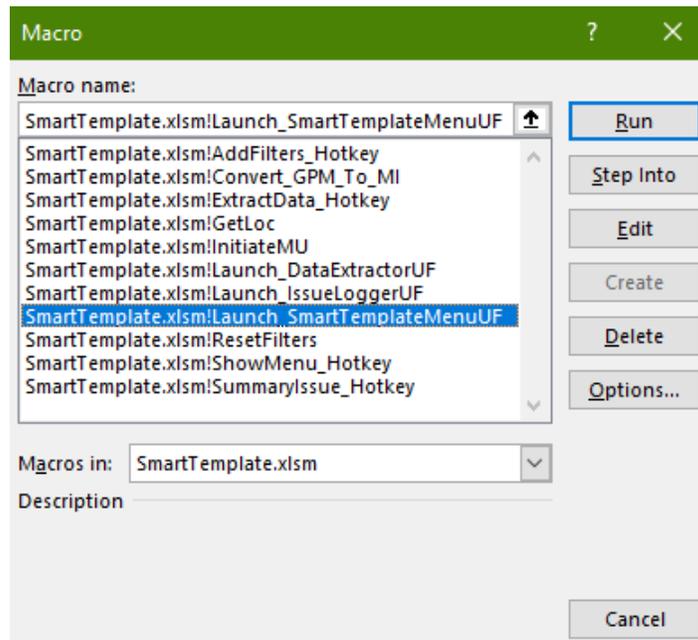
## ADD HYPERLINK TO SCANNED DOCS

This function allows you to add a column with hyperlinks to the scanned docs for water rights in your spreadsheet.

1. Open the **SmartTemplate**, which can be found in your Team’s folder. Leave this sheet open while you set up your index. Once you are finished preparing the index, you can close it.
2. In your index sheet, under the VIEW TAB, select MACROS. This will pull up the Macro window, which has predefined functions to work the data.



3. Under MACROS IN: select the **SmartTemplate**. This will not work if **SmartTemplate** is not open. Then, select [SmartTemplate.xlsm!Launch\_SmartTemplateMenuUF]. This will pull up the options defined in the smart template. Click RUN. This will open the **SmartTemplate** action menu.
4. In your index sheet, insert a new column with the header “Scanned Docs”. Select the whole column.
5. In the **SmartTemplate** action menu, select ADD SCANNED DOCUMENTS.



## ORDER ADDRESSING REEXAMINATION, 2012

Filed 12.14.2012

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### **ORDER ADDRESSING REEXAMINATION**

#### **I. Background**

Verification was the process used by the Department of Natural Resources and Conservation (DNRC) prior to the adoption of the Water Right Claim Examination Rules. When the Water Right Claim Examination Rules were adopted (effective July 15, 1987), they were not applied to previously verified claims. Verified claims moved through the objection and litigation phases without further review. Questions were raised regarding whether reexamination of verified claims was necessary due to potential differences between claims reviewed under the Water Right Claim Examination Rules and claims reviewed under the verification process.

The 2005 Legislature authorized the Water Court, upon proper petition or upon the Court's own initiative, to prioritize basins for DNRC claim examination and to direct the DNRC to reexamine claims that were verified and not previously subject to the Water Right Claim Examination Rules. §§ 85-2-270 and 271, MCA. In accordance with § 85-2-271(3)(b), MCA, the Water Court ordered the DNRC to reexamine Basin 40L, Frenchman Creek drainage, a tributary of the Milk River, which was reviewed under the verification process. December 4, 2009 Order Directing DNRC to Reexamine Claims in Basin 40L. One purpose of reexamining Basin 40L was to gather information regarding whether previous review of claims under the verification process generated significant, practical differences from review of claims under the Water Right Claim Examination Rules.

Based on the results of the Basin 40L reexamination, DNRC submitted a memorandum and proposal to the Water Court regarding reexamination of verified claims (hereinafter DNRC proposal). The DNRC proposal outlined standards and

indexes to run through the state water right Trident to update elements of verified claims and make elements more consistent with claims currently examined under the Water Right Claim Examination Rules. The proposal attempted to address elements that "may not have been as closely scrutinized during verification." DNRC proposal, p. I.

In 2009, the Legislative Audit Division conducted an assessment of operations within the water rights adjudication process. The audit report was made available in June 2010. One of the objectives of the audit was to address the difference between verified and examined claims. June 20 IO Performance Audit Report to the Montana Legislature, p. 6. The audit determined the difference between verified and examined claims was not significant enough to justify a complete reexamination. p. 9. According to the rep01i, a complete reexamination would be inconvenient for water users and the time and resources necessary for reexamination would not be justified by the results. p. 14. Although the audit determined reexamination should be

avoided, it did not conclude that no action should be taken. The report concluded the DNRC and Water Court should work together to develop procedures to address elements subject to a higher degree of error to improve accuracy, reliability and consistency. p. 15.

In September 2012, a committee of Water Court and DNRC staff was formed to address the reexamination issue. The committee included Water Court staff - Chief Water Judge C. Bruce Loble, Associate Water Judge Russ McElyea, Court Administrator Sandra Palakovich, Senior Water Masters Colleen Coyle, Kathryn Lambert, and Douglas Ritter. Water Masters Bina Peters and Anna Stradley - and DNRC Water Adjudication Bureau Chief John Peterson and DNRC Operations Manager Jan Langel. Generally, the committee agreed a complete reexamination should not be undertaken. However, it was agreed certain elements or issues that were not subject to consistent review should be examined by DNRC to eliminate potential problems for water users.

## **II. Adoption of DNRC Proposal**

The committee discussed implementing the DNRC proposal. According to the committee, instead of limiting review to claims in verified basins, the DNRC proposal could be applied to all claims in decrees issued prior to March 28, 1997 that are not a final decree. Decrees issued after March 28, 1997 will not be issued again prior to Final Decree. See § 85-2-233(1)(d). It is presumed that decrees issued prior to March 28, 1997 will be issued again. Moreover, elements of claims issued in decrees prior to March 28, 1997, if subject to standardization, would appear in another decree and water users would have notice of the standardized elements. Instead of a complete DNRC reexamination between decrees, claims should be subject to a limited review. The review would focus on elements that were not scrutinized as closely during verification and issues that, if not reviewed, could cause problems for water users.

Based on feedback from the committee, corrections were made to the DNRC proposal to reflect current standards and procedures. The DNRC proposal (as modified) is attached as Exhibit A. The DNRC proposal contains three parts. The first part contains general guidelines for running standards. The second part describes specific standards to run through Trident. The third part identifies summary indexes to run through Trident. A majority of the committee agreed the DNRC proposal should be adopted.

The committee concluded the DNRC proposal should not apply standards and indexes to elements that have been modified by the Water Court through prior adjudication proceedings. To prevent improperly standardizing elements that have already been litigated, Trident should identify litigated elements. Any element of a claim that has been litigated by the Water Court shall not be subject to standardization or further DNRC review. To identify whether an element has been subject to litigation, the objection list issued for the previous decree should be reviewed. An element of a claim that appeared on the objection list should not be subject to modification based on implementation of the DNRC proposal. Additionally, an element that was modified as a result of Water Court proceedings and marked by an asterisk should not be subject to modification based on implementation of the DNRC proposal.

### **III. Identification of Additional Issues Requiring Further DNRC Review**

In addition to the DNRC proposal, the committee identified five issues requiring further review: (1) decree exceeded; (2) filed and use rights predating district court decrees; (3) over-filed notices of appropriation; (4) claims with multiple uses; and (5) standardization and identification of point of diversion, source, and ditch name. Like the implementation of the DNRC proposal, review of these issues should apply to all claims in decrees issued prior to March 28, 1997. Both Water Court and DNRC committee members reported that review of these issues is important to achieve enforceable decrees.

According to the committee, issues one through four were not subject to consistent review. In some basins, these issues may not have been identified at all. Inconsistent review of decree exceeded, filed and use rights predating decrees, over-filed notices of appropriation and multiple uses may create problems for future enforcement of Water Court decrees.

Point of diversion, source and ditch name have been identified as elements that, if not subject to further review, may cause confusion for water users and could lead to problems for enforcement of Water Court decrees. Knowing the accurate locations and common or shared points of diversion and sources, as well as proper ditch names, will help eliminate unnecessary confusion among water users when a Water Court decree is enforced.

DNRC review of these five issues will help ensure the Water Court decrees will be useable and readily enforceable. Therefore, the committee concluded that in addition to the DNRC proposal, these five issues should be reviewed using current DNRC examination procedures. If further review identifies decree exceeded issues, filed and use rights that predate decrees, over-filed notices of appropriation, and claims with multiple uses, the corresponding issue remark or information remark should be added to the affected claims. If point of diversion, source, or ditch name are modified as a result of DNRC review, the following issue remark should be added to the abstracts of modified claims:

[ELEMENT(S) WAS/WERE] MODIFIED AS A RESULT OF DNRC REVIEW  
UNDER MONTANA WATER COURT ORDER DATED DECEMBER 14, 2012.

### **IV. Fish and Wildlife, Wildlife, and Recreation Claims**

The committee members also discussed the application of guidelines concerning the flow rate and volume of fish and wildlife, wildlife, and recreation claims. Rule 29 of the Water Right Claim Examination Rules contains guidelines for the examination of flow rate and volume of other uses including fish and wildlife, wildlife, and recreation claims. The rule can be broken into four parts, claims diverted without a reservoir, claims diverted with an offstream reservoir, claims with an onstream reservoir, and instream claims (excluding Murphy Rights).

#### **1. Claims Diverted and Without a Reservoir**

Rule 29(b)(1) applies to fish and wildlife, wildlife, and recreation claims diverted but without a reservoir. The flow rate guideline is the capacity of the diversion and conveyance

system and the volume is "that which appears reasonable and customary for the specific purpose..." Rule 29(b)(i) and (ii), W.R.C.E.R.

## **2. Claims Diverted With an Offstream Reservoir**

Rule 29(c) applies to fish and wildlife, wildlife, and recreation claims diverted with an offstream reservoir. The flow rate guideline is the capacity of the diversion and conveyance system or if the diversion and conveyance system is shared by more than one claimant, the guideline is that which appears reasonable and customary for the specific purpose. Rule 29(c)(1)(i), W.R.C.E.R. If the volume is less than 15 Acre Feet, it is generally accepted as claimed. If the volume is greater than 15 Acre Feet the guideline is maximum storage capacity plus the estimate of evaporation. Rule 29(c)(1)(ii), W.R.C.E.R.

## **3. Claims Diverted With an Onstream Reservoir**

Rule 29(c), W.R.C.E.R. also addresses fish and wildlife, wildlife and recreation claims diverted with an onstream reservoir. These claims do not receive a quantified flow rate; an information remark is added stating "A specific flow rate has not been decreed for use from this onstream reservoir." Rule 29(c)(1), W.R.C.E.R. The volume guideline is the same as for claims with offstream reservoirs. See Rule 29(c)(1)(ii).

## **4. Instream Claims Excluding Murphy Rights**

The flow rate and volume guideline for instream fish and wildlife, wildlife, and recreation claims excluding Murphy Rights is "the minimum amount necessary to sustain the specific purpose." Rule 29(d), W.R.C.E.R.

The guidelines set forth in Rule 29 use language that is difficult to apply consistently. Phrases such as "that which appears reasonable and customary" and "the minimum amount necessary to sustain the specific purpose" are susceptible to a wide variety of interpretations resulting in potential confusion and unfairness to both claimants and objectors. Because there is currently no statewide standard that can be applied to meet these guidelines, flow rate and volume have appeared in decrees with no quantified flow rate or volume. Despite the lack of clear guidelines, flow rate and volume should not appear in decrees as unquantified. This practice is not in compliance with Rule 29 and will make administration of these rights difficult in the future and may ultimately require that these claims be remanded to the Water Court for additional review.

To avoid these problems, the committee agreed that, notwithstanding previous DNRC policy, for all previously verified and examined claims as well as currently examined claims, when the guideline cannot be determined, the claimed flow rate and volume of fish and wildlife, wildlife, and recreation claims should remain as claimed (excluding flow rates of claims with onstream reservoirs) and an issue remark should be added as shown below:

THE FLOW RATE AND VOLUME OF THIS CLAIM WAS NOT SUBJECT TO A STANDARDIZED STATEWIDE EXAMINATION AND REMAIN AS ORIGINALLY CLAIMED. THE CLAIMED [FLOW RATE AND] VOLUME CAN BE CONTESTED

BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THE [FLOW RATE AND] VOLUME WILL BE DECREED AS CLAIMED.

### **V. Examination of Late Claims**

By Order of the Montana Supreme Court, the final deadline for filing a Statement of Claim was April 30, 1982. Failure to file a Statement of Claim by April 30, 1982 established a conclusive presumption of abandonment. See §§ 85-2-221 and 226, MCA. However, in 1993, the Montana Legislature amended § 85-2-221, MCA, to allow late filings until July 1, 1996. Claims filed after April 30, 1982 but on or before July 1, 1996 are considered "late claims."

Several decrees were issued prior to the amendment allowing late claims. As a result, late claims were not examined and were not included in several decrees.

Therefore, all late claims in basins for which a Temporary Preliminary Decree or Preliminary Decree was issued and late claims were not examined should be subject to DNRC examination so they can be included in the decrees.

### **VI. Conclusion and Direction to DNRC**

A complete reexamination of verified claims is not practical or necessary. As recommended in the audit report the DNRC and Water Court worked together to create a plan that balances the need for accuracy and consistency with fairness to water users and consideration of time and cost necessary for the implementation of the plan. Applying the DNRC proposal and reviewing claims for the five additional issues identified by the committee covers issues and elements that did not receive consistent review and are essential to the enforceability, consistency, and accuracy of the decrees. Review of the five issues and implementation of the DNRC proposal applies to claims issued in Temporary Preliminary Decrees and Preliminary Decrees issued prior to March 28, 1997 without having to undertake a complete reexamination prior to the issuance of the next decree. Additionally, this Order addresses the examination of previously unexamined late claims and clarifies procedures for examining flow rate and volume of fish and wildlife, wildlife, and recreation claims in all decrees issued after this Order. Therefore, it is

ORDERED that DNRC shall implement the proposed standards and indexes identified in the DNRC proposal (Exhibit A) for all claims in Temporary Preliminary Decrees and Preliminary Decrees issued prior to March 28, 1997.

ORDERED that the proposed standards identified in the DNRC proposal shall not apply to any element of a claim that has already been litigated by the Water Court. Any element of a claim that appeared on the objection list shall be considered litigated and shall not be subject to modification based on implementation of the DNRC proposal.

Any element of a claim that is marked by an asterisk (added by the Water Court) has also been litigated and shall not be subject to modification based on the DNRC proposal.

ORDERED that DNRC shall review all claims in Temporary Preliminary Decrees and Preliminary Decrees issued prior to March 28, 1997, for decree exceeded issues, filed and use rights that predate district court decrees, over-filed notices of appropriation, and multiple uses. If DNRC identifies decree exceeded issues, filed and use rights that predate district court decrees, over-filed notices of appropriation, or multiple uses, DNRC shall add the corresponding issue remark or information remark to the affected claims.

ORDERED that for all claims in Temporary Preliminary Decrees and Preliminary Decrees issued prior to March 28, 1997, DNRC shall standardize the legal description for points of diversion and shall identify and standardize source names and ditch names. If point of diversion, source, or ditch name are modified as a result of this review, the issue remark specified in Section III shall be added to the abstract of each modified claim.

ORDERED that for all fish and wildlife, wildlife, and recreation claims in Temporary Preliminary Decrees and Preliminary Decrees issued prior to March 28, 1997 and in basins currently being examined, for which the flow rate or volume guideline cannot be determined, the flow rate and volume shall remain as claimed (excluding flow rates of claims with onstream reservoirs) and the issue remark specified in Section IV shall be placed on the claims.

ORDERED that DNRC shall examine all late claims filed in basins for which a Temporary Preliminary Decree or Preliminary Decree was issued and late claims were not examined.

ORDERED that DNRC review and revise its procedures to comply with this order.

## **PROPOSED STANDARDS**

### **I. Current General Guidelines for running standards:**

- ◆ Standards are to be run against just the post decree abstract of the water right for the specified owner, decree, or water right number.
- ◆ The only water right types standards are run against include Statement of Claim, interstate Transfer Claims and Irrigation District Claims. All Status values are included.
- ◆ The options for running standards include by owner within a given (input) basin, by water right, or by decree. All rules about which water rights apply are taken into consideration for each option.
- ◆ No "modified in this version" flags will be set when making changes to data as specified by standards.
- ◆ The "Standards Applied" checkbox that previously existed on the version screen will be moved to the water rights screen. This checkbox will be set to indicate that standards have been applied to this water right, so that standards are not run again against the same water right. The only real issue with running standards again is that it may create more than one identical remark for a water right. Volume and flow rate description fields will not be duplicated,

but any issues remarks created by standards could be repeated if standards are applied more than once.

◆ Standards can only be run against a non-decreed water right. A decreed water right is any water right that is included as part of a decree where the decree has an event of Decree Issued.

◆ Standards against an owner will also require the input of the basin, so that standards are only run against non-decreed water rights owned by the given owner, in the requested basin.

## **II. Details of the Standards program:**

1. Flow rates should be expressed in either gallons per minute (GPM) or cubic feet per second (CFS) units. Flow rates less than one CFS should be converted to GPM. Flow rates greater than 1 CFS should be expressed in CFS (448.8 GPM a 1 CFS).

### Standards Action

- Apply to all water rights.
- Modify the flow rates to the correct units, according to the rules above, but do not change a flow rate with a unit of 'PDF'. When converting the flow rate values, round to 2 decimal places.
- If no flow rate is listed, but the water right shows flow rate units, remove the flow rate units.

2. For onstream reservoirs; if the historical right type is filed or use, and there is no keep flag on the flow rate (Keep Modified by Water Court), then the following remark is added to the water right. Also, the flow rate is set to zero, the flow rate units to null, and its origin to modified by rule.

"No flow rate has been decreed for this use from this onstream reservoir."

### Standards Action:

- Apply to water rights that have an on-stream reservoir, have a historical right type of "FILE" or "USE", and do not have a keep flag (IKMRL, KMWC, KAME, KCLA, KDEC) on the flow rate.
- Set the flow rate in the version record to NULL
- Set the flow rate units in the version record to NULL
- Set the flow rate element origin in the version record to MRLE
- Set the value in the max flow rate description field of the version record to the text above. (On the pop-list, it is marked as F2.)

3. For irrigation claims; when the method of irrigation is water spreading, and there is no onstream reservoir, and the historical right type is filed or use, then the following remark is added to the water right. Also, set the flow rate to zero, the flow rate units to null, and its origin to modified by rule.

"A specific flow rate has not been decreed because this use consists of direct flow water spreading."

Standards Action:

- Apply to water rights that have a purpose of 'IR', an irrigation type of 'D', a historical right type of "FILE" or "USE", and do not have an onstream reservoir.
- Set the flow rate in the version record to NULL
- Set the flow rate units in the version record to NULL
- Set the flow rate element origin in the version record to MRLE
- Set the value in the max flow rate description field of the version record to the text above. (On the pop-list, it is marked as F3.)

4. For irrigation claims; when the method of irrigation is natural subirrigation, and there is no onstream reservoir, and the historical right type is filed or use, then the following remark is added to the water right. Also, the flow rate is set to zero, the flow rate units is set to null, and its origin to modified by rule.

"No flow rate has been decreed for this use of natural subirrigation."

Standards Action:

- Apply to water rights that have a purpose of 'IR', an irrigation type of 'N', and a historical right type of "FILE" or "USE", and do not have an onstream reservoir. Set the flow rate in the version record to NULL
- Set the flow rate units in the version record to NULL
- Set the flow rate element origin in the version record to MRLE
- Set the value in the max flow rate description field of the version record to the text above. (On the pop-list, it is marked as F4.)

5. For irrigation claims; when the method of irrigation is natural overflow, and there is no onstream reservoir, and the historical right type is filed or use, then the following remark is added to the water right. Also, the flow rate is set to zero, the flow rate units to null, and its origin to modified by rule.

"No flow rate has been decreed for this natural overflow method of irrigation."

Standards Action:

- Apply to water rights that have a purpose of 'IR', an irrigation type of 'O', and a historical right type of "FILE" or "USE", and do not have an onstream reservoir.
  - Set the flow rate in the version record to NULL
  - Set the flow rate units in the version record to NULL
  - Set the flow rate element origin in the version record to MRLE
  - Set the value in the max flow rate description field of the version record to the text above. (On the pop-list, it is marked as FS.)
6. For irrigation claims, except the following:
- water spreading systems (ie: irrigation type of 'D')
  - systems involving reservoirs (ie: water right has a reservoir record)
  - claims decreed a volume (ie: historical right type= decreed and water right has a VIO Remark)
  - claims where the volume has a keep flag (ie: volume element origin is KMRL, KMWC, KAME, KCLA, or KDEC)

add the following remark.

"The total volume of this water right shall not exceed the amount put to historical and beneficial use."

Standards Action:

- Apply to water rights that have a purpose of 'IR', unless any of the exceptions listed above apply.
  - Set the volume in the version record to NULL
  - Set the volume element origin in the version record to MRLE
  - Set the value in the volume description field of the version record to the text above. (On the pop-list, it is marked as V9.)
- 6A. For irrigation claims with a reservoir record and a V9 remark.

add the following remark.

"The total volume of this water right shall not exceed the amount put to historical and beneficial use."

Standards Action:

- Apply to water rights that have a purpose of 'IR', that have a reservoir record and a V9 remark.
- Set the volume in the version record to NULL
- Set the volume element origin in the version record to MRLE

6B. If purpose is irrigation and a reservoir record and type of irrigation is not water spreading and the claimed volume is greater than 15 acre-feet, and the claimed volume is greater than the volume guideline for the climatic area (see list below) then add the following remark.

"The volume of this water right appears to be excessive for the claimed purpose. The claimed volume is greater than (guideline) acre-feet per acre per year."

Climatic Area= 1; guideline= 11.4 acre-feet per acre per year

Climatic Area= 2; guideline= 10.2 acre-feet per acre per year

Climatic Area = 3; guideline= 9.4 acre-feet per acre per year

Climatic Area= 4; guideline= 8.5 acre-feet per acre per year

Climatic Area= 5; guideline= 7.2 acre-feet per acre per year

7. For stock claims; when the S/G code does not= G or there is no reservoir, or the major type is surface water and pump, or the major type is surface water and pipeline, AND NO KEEP FLAG ON THE FLOW RATE, change the flow rate to zero, the flow rate units to null, and its origin to as modified by rule, and add the following remark.

"A specific flow rate has not been decreed because this use consists of stock drinking directly from the source, or from a ditch system. The flow rate is limited to the minimum amount necessary to sustain this purpose."

Standards Action:

- Apply to water rights that have a purpose of stock, unless the S/G code = G or reservoir, AND NO KEEP FLAG ON THE FLOW RATE.
- Set the flow rate in the version record to NULL
- Set the flow rate units in the version record to NULL

- Set the flow rate element origin in the version record to MRLE
- Set the value in the max flow rate description field of the version record to the text above. (On the pop-list, it is marked as F9.)

7A. For stock claims, when onstream reservoir, and there is no 'keep' flag on the flow rate, change the flow rate to zero, the flow rate units to null, and its origin to as modified by rule, and add the following remark (FF007new rules).

"A specific flow rate has not been decreed for this use from this onstream reservoir. The flow rate is limited to the minimum amount historically necessary to sustain this purpose."

Standards Action:

- Apply to water rights that have a purpose of stock and onstream reservoir when there is no 'keep' flag on the flow rate.
- Set the flow rate in the version record to NULL
- Set the flow rate units in the version record to NULL
- Set the flow rate element origin in the version record to MRLE
- Set the value in the max flow rate description field of the version record to the text above. (On the pop-list, it is marked as FF007.)

8. For stock claims; when the owner is not USA, the volume is set to zero, and its origin to as modified by rule, and the following remark is added to the water right.

"This water right includes the amount of water consumptively used for stock watering purposes at the rate of 30 gallons per day per animal unit. Animal units shall be based on reasonable carrying capacity and historical use of the area serviced by this water source."

Standards Action:

- Apply to water rights that have a purpose of stock, unless the owner has a customer type value of 'FEDA', 'LOCA', or 'RESV', (meaning owner is USA).
- Set the volume in the version record to NULL
- Set the volume element origin in the version record to MRLE
- Set the value in the volume description field of the version record to the text above. (On the pop-list, it is marked as VIO.)

9. For stock claims; when the owner is USA, and there is no reservoir, and no keep flag on the volume origin, set the volume to zero, and its origin to as modified by rule, and then the following remark is added to the water right.

"This water right includes the amount of water consumptively used for stock watering purposes at the rate of 30 gallons per day per animal unit. Animal units shall be based on reasonable carrying capacity and historical use of the area serviced by this water source."

Standards Action:

- Apply to water rights that have a purpose of stock, when the owner has a customer type value of 'FEDA', 'LOCA', or 'RESV', (meaning owner is USA), unless there is a reservoir record or a keep flag (KMRL, KMWC, KAME, KCLA, KDEC) on the volume element origin.
- Set the volume in the version record to NULL
- Set the volume element origin in the version record to MRLE
- Set the value in the volume description field of the version record to the text above. (On the pop-list, it is marked as VIO.)

10. For mining claims; when there is no reservoir, and no keep flag on the volume origin, then the following remark is added to the water right and the volume origin is set to as modified by rule.

"This water right is limited to the volume of water historically used for mining purposes."

Standards Action:

- Apply to water rights that have a purpose of 'MN', unless the water right has an element origin value on the volume origin of KMRL, KMWC, KAME, KCLA, or KDEC, or unless the water right has a reservoir record.
- Set the volume in the version record to NULL
- Set the volume element origin in the version record to MRLE
- Set the value in the volume description field of the version record to the text above. (On the pop-list, it is marked as VII.)

11. For fire protection claims; when there is no keep flag on the volume origin, add the following remark (VF014) to the water right and set the origin for volume to as modified by rule.

"The volume of this right is limited to the minimum amounts necessary for fire protection purposes."

Standards Action:

- Apply to water rights that have a purpose of 'FP', unless the water right has an element origin value on the volume origin of KMRL, KMWC, KAME, KCLA, or KDEC.
- Set the volume in the version record to NULL
- Set the volume element origin in the version record to MRLE
- Set the value in the volume description field of the version record to the text above. (VF014)

12. For irrigation claims; when the historical right type is decree, and the flow rate is greater than 17 gpm/acre (claimed flow rate in gallons per minute divided by the total claimed acres), and there is no keep flag on the flow rate, then the following remark is added to the water right.

"The claimed flow rate exceeds the 17 gpm per acre guideline and cannot be confirmed due to lack of data. The flow rate equals (the result of the above calculation) gpm per acre."

Standards Action:

- Apply to water rights that have a purpose of 'IR' and a historical right type of 'DECR', and a flow rate > 17gpm/acre, unless the right has an element origin value on the flow origin of KMRL, KMWC, KAME, KCLA, or KDEC.
- Add a formatted remark to this water right with a remark category code of FR12 (flow rate issue standards) a remark code (frlb\_cd) of FRSS, and variable that matches the above text.

13. For irrigation claims, when the type of right is filed or use, and the flow rate is greater than 17 gpm/acre (claimed flow rate in gallons per minute divided by the total claimed acres), and there is no keep flag on the flow rate:

- Then the flow rate is reduced in Trident to the calculated standard (claimed acres times 17 gpm). Flows greater than 448.8 gpm will be converted and stored in Trident as cfs, otherwise store the rate in gpm.
- Then the flow rate origin is changed to "modified by rule."
- Then the following remark is added to the water right.

"The flow rate of this water right has been reduced to this 17 gpm per acre guideline. The flow rate may be contested by proper objection."

Note: 448.8 gallons per minute = 1 cubic foot per second.

Standards Action:

- Apply to water rights that have a purpose of 'IR' and a historical right type of 'FILE' or 'USE', and a flow rate > 17gpm/acre, unless the right has an element origin value on the flow origin of KMRL, KMWC, KAME, KCLA, or KDEC.
- Set the flow rate in the version record to the calculated standard
- Set the flow rate units in the version record to the appropriate value (either GPM or CFS)
- Set the flow rate element origin in the version record to MRLE
- Add a formatted remark to this water right with a remark category code of FR2 (flow rate information standards) a remark code (frlb\_cd) of FRNS, and variable that matches the above text.

14. For all claims; when the volume is greater than zero, calculate the feasible volume ((the period of use in days times the flow rate in gpm times 1440) divided by 325,851 c acre-feet). The flow rate standards (13 & 14) must be applied before running the volume check. If the claimed volume is greater than the feasible volume, then the following remark is added to the water right.

"The claimed volume exceeds the maximum feasible volume. Based on the flow rate and period of use, the maximum volume possible is (the result of the above calculation) acre-feet per year."

Note: 325,851 gallons = 1 acre-foot

Standards Action:

- Apply to all water rights that have a volume amount, when the volume amount is greater than the calculated feasible volume.
- Set the flow rate in the version record to the calculated standard
- Add a formatted remark to this water right with a remark category code of VM12 (volume issue standards) a remark code (frlb\_cd) of V24, and variable that matches the above text.

15. For irrigation claims; when the type of irrigation is water spreading, and the historical right type is filed or use and there is no keep flag on the volume, then check the claimed volume to see if it is greater than the volume guideline for the climatic area (volume guideline times the claimed acres). If yes;

- Then reduce the volume in Trident to the standard calculated volume.
- Then change the origin of the volume to "as modified by rule."
- Then add the following remark to the water right.

"The volume of this water right has been reduced to the (guideline) acre-feet per acre guideline for water spreading. The volume may be contested by proper objection."

Climatic Area = 1; guideline= 2.3 acre-feet per acre per year

Climatic Area= 2; guideline= 2.0 acre-feet per acre per year

Climatic Area= 3; guideline= 1.9 acre-feet per acre per year

Climatic Area= 4; guideline= 1.7 acre-feet per acre per year

Climatic Area = 5; guideline= 1.4 acre-feet per acre per year

Standards Action:

- Apply to water rights that have a purpose of 'IR', an irrigation type of 'D', a historical right type of 'FILE' or 'USE', and a volume that is > the volume guideline for the climatic area, unless the right has an element origin value on the volume origin of KMRL, KMWC, KAME, KCLA, or KDEC.
- Set the volume in the version record to the standard calculated volume
- Set the volume element origin in the version record to MRLE
- Add a formatted remark to this water right with a remark category code of VM2 (volume information standards) a remark code lfrlb\_cd) of VS, and variable that matches the above text.

16. For all water right claims; if the maximum volume in the water right detail screen does not equal the volume in the purpose record, then change the volume in the purpose record to equal the volume in the water right detail screen.

Standards Action:

- Apply to all water rights where the volume in the version record does not equal the volume of the purpose records.
- Set the volume in the first purpose record so that the sum volume for all purposes equals the volume in the version record.

17. For all water right claims; if any parcel id numbers are skipped (003, 005), then renumber the parcels so they are in consecutive order.

Standards Action:

- Apply to all water rights with skipped numbers in the parcel (place of use (puse\_id\_seq)) records.
- Renumber the parcel (place of use records) to be consecutive.

18. For all water right claims; all point of diversion ids shall be numbered to start with .1 and numbered consecutively. Ditch names identified by diversion number would need to follow their corresponding diversion id.

Standards Action:

- Apply to all water rights with skipped numbers in the point of diversion records (podv\_no).
- Renumber the point of diversion records to be consecutive.
- Ditch numbering to follow.

19. For all water right claims; if the period of diversion in the water right detail screen does not equal the period of use in the purpose record, then change the period of diversion to match the period of use, unless the period of diversion has a "keep, modified by rule" origin.

Standards Action:

- Apply to all water rights when the period of diversion (appropriation) does not equal the sum of the period of use records for the water right purposes, and the period of diversion is not equal to KMRL.
- Reset the period of diversion so that its begin date matches the earliest begin date of the period of uses and its end date matches the latest end date of the period of uses.

**ELEMENTS MODIFIED BY WATER COURT WOULD NOT BE CHANGED BY STANDARDS.**

Changes will NEVER be made to elements modified by water court. A second original version would be created; standards would then be applied ensuring no changes to the original claim. The program would be written to exclude the "modified by water court" elements.

**III. Summary indexes that will be needed:**

**Reserved Rights-** Make sure that the type of right is changed from statement of claim to reserved right. Verify the correct remark is added to the reserved right.

**Remarks-** Standardize old legacy remarks, convert obsolete remarks, change free text remarks to formatted remarks.

In the re-exam of basin 40L, only 87 remarks appeared, 410 were added during re-exam. The majority of the remarks were placed on period of diversion, point of diversion, place of use, purpose, ownership, means of diversion and priority date.

**Decree Exceeded-** Identify all decree exceeded claims and notify claimants; check for consistency in original appropriator name.

**Reservoir Index-** Verify period of diversion. Standardize reservoir names and reservoir information.

Examination as we know it today did not take place on reservoirs during verification. Most major elements concerning reservoirs were not documented and many assumptions were made. No reservoir work sheets appear in verification files.

**Source Index-** Source name standardization is essential. This was not a high priority during verification. For decree exceeded issues and future enforcement purposes this is a must.

**Ditch Index-** Ditch name standardization is essential. This was not a high priority during verification. Verify point of diversion consistency, accurate legal descriptions are crucial for future enforcement purposes.

**Implied Claims-** Verify correct remark is applied to implied claims and their parent right. Were implied claims verified or just generated and accepted?

**Point of Diversion -** Sort the PODs by TRS and eliminate gaps. During verification very little time was spent locating actual PODs and confirming correct legal's I  $\frac{1}{4}$   $\frac{1}{4}$   $\frac{1}{4}$  ).

**Place of Use-** Sort the POD's by TRS and eliminate gaps.

ORDER ON EXAMINATION OF BLM RESERVED WATER RIGHT CLAIMS, 2009

Filed 09.23.2009

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**ORDER ON DNRC EXAMINATION OF BLM RESERVED WATER RIGHT CLAIMS  
-STATEWIDE 2009-**

On September 8, 2005, this Court issued a consolidated order directing the Department of Natural Resources and Conservation (DNRC) to examine all United States Bureau of Land Management (BLM) water right claims in accordance with the Water Right Claim Examination Rules. The order also directed DNRC to place a specific issue remark on reserved water right claims filed by the BLM based upon Public Water Reserve No. 107. The order was issued for basins 40B, 40R, 41A, 41B, 41D, 41J, 41M, 41P, 41QJ, 42C, 76F, and 76HA; The order should apply statewide.

Any BLM claim asserting a reserved water right will be examined in accordance with this order. Accordingly, it is

ORDERED that the DNRC shall examine all BLM claims in accordance with the current Water Right Claim Examination Rules. Basically, the claims will be examined as if they were filed under state law.

ORDERED that if any BLM claims assert a reserved water right under Public Water Reserve No. 107 (generally identified by a claimed priority date of April 17, 1926), the DNRC shall also add the following or similar issue remark to the claim abstract:

THIS CLAIM IS BASED ON PUBLIC WATER RESERVE NO. 107 CREATED BY EXECUTIVE ORDER DATED APRIL 17, 1926. IT IS NOT CLEAR IF THIS CLAIMED RIGHT IS A FEDERAL RESERVED WATER RIGHT, BUT IF IT IS, IT IS NOT CLEAR WHETHER THE PURPOSE CLAIMED WAS CONTEMPLATED BY SUCH A RESERVATION, OR IF THE AMOUNT OF WATER CLAIMED IS THE AMOUNT NECESSARY TO FULFILL THE PURPOSE OF THE RESERVATION.

ORDERED that if any BLM claims asserting a reserved water right under Public Water Reserve No. 107 are transferred to a private entity, the DNRC shall examine the transferred claim in accordance with the Water Right Claim Examination Rules, as, amended, and add the following or similar issue remark to the abstract:

THIS CLAIM WAS ORIGINALLY FILED AS A RESERVED RIGHT BY THE UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF LAND MANAGEMENT, AND WAS BASED ON PUBLIC WATER RESERVE NO. 107 CREATED BY EXECUTIVE ORDER DATED APRIL 17, 1926. THIS CLAIM WAS SUBSEQUENTLY TRANSFERRED TO A PRIVATE ENTITY. IT IS NOT CLEAR IF THIS CLAIMED RIGHT IS A FEDERAL RESERVED WATER RIGHT, BUT IF IT IS,

IT IS NOT CLEAR WHETHER THE PURPOSE CLAIMED WAS CONTEMPLATED BY SUCH A RESERVATION, OR IF THE AMOUNT OF WATER CLAIMED IS THE AMOUNT NECESSARY TO FULFILL THE PURPOSE OF THE RESERVATION, OR WHETHER THIS CLAIM MAY BE TRANSFERRED TO A PRIVATE ENTITY AND RETAIN THE ELEMENTS ASSOCIATED WITH A RESERVED RIGHT, OR WHETHER THE ELEMENTS OF THIS CLAIM MUST BE MODIFIED TO REFLECT ITS HISTORICAL BENEFICIAL USE.

ORDERED that this Order supersedes any previous order on Public Water Reserve No. 107.

ORDERED that if any BLM claim asserts a reserved water right with a priority date other than April 17, 1926, the DNRC shall add the following or similar issue remark to the abstract:

THIS CLAIM WAS FILED AS A RESERVED WATER RIGHT. IT IS NOT CLEAR IF THIS CLAIMED RIGHT IS A RESERVED WATER RIGHT, BUT IF IT IS, IT IS NOT CLEAR WHETHER THE PURPOSE CLAIMED WAS CONTEMPLATED BY SUCH A RESERVATION, OR IF THE AMOUNT OF WATER CLAIMED IS THE AMOUNT NECESSARY TO FULFILL THE PURPOSE OF THE RESERVATION.

### RESERVOIR QUESTIONNAIRE

Available in MMBDATA Drive

## **Reservoir Questionnaire**

**Return the questionnaire to the DNRC – Water Rights Adjudication office by \_\_\_\_\_.** Please call \_\_\_\_\_ if you have questions or need assistance.  
**Thank you.**

***Your answers should reflect the practices in place prior to July 1, 1973.***  
**Please complete as much of the following information as possible.**

**A guide for identifying the capacity of reservoirs, lakes, and ponds is attached.**

#### A. Data

1. **If a dam is claimed:**
  - a. Dam height:
  - b. Maximum depth (spillway height):
  - c. Surface area when full, in acres:

d. Volume (acre-feet):

Compute as follows: surface area in acres x maximum depth in feet x 0.4 = acre-feet

e. How were these measurements taken?

2. **If a pit is claimed:**

a. Length (feet):                      Width (feet):                      Depth (feet):

b. Volume (acre-feet):

Compute as follows: surface area in acres x depth in feet x 0.5 = Capacity in acre-feet

c. How were these measurements taken?

3. The reservoir is: on the source \_\_\_\_\_ off the source \_\_\_\_\_

B. Operation

1. If you have a headgate, drawdown tube or pump for diverting water from the reservoir, how much of your reservoir can you drain?

\_\_\_\_\_ 1/4 \_\_\_\_\_ 1/2 \_\_\_\_\_ 3/4 \_\_\_\_\_ All or \_\_\_\_\_ Percent

2. Period of year when water is diverted, impounded or withdrawn from the source into the reservoir or pit (month/day):

\_\_\_\_\_ to \_\_\_\_\_

3. Period of year when water is diverted or released from reservoir or pit for use (month/day):

\_\_\_\_\_ to \_\_\_\_\_

4. If the reservoir is off the source, how is water diverted from the source to the reservoir?

a. Headgate and/or Ditch (dimensions and flow rate):

b. Pump (size, type and flow rate):

c. Other (give capacity):

C. History and Condition

1. When was dam/pit built?

2. When was it first used for purpose claimed?

3. Does the reservoir hold water?

4. Is the dam (or dike) washed out or breached?

If so, how long has it been this way?

Do you plan to repair it? If so, when?

5. Has dam been raised? If so, when?

Did this add to freeboard, capacity, or both?

How much was the capacity increased?

6. Is the reservoir used for another purpose?  
Please explain:

Additional Remarks:

Person Completing Questionnaire:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

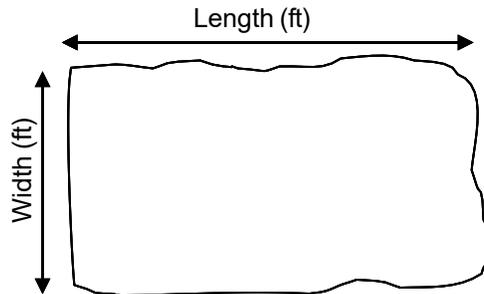
Phone: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Please return this form to:      DNRC – Water Rights Adjudication  
ATTN:  
910 Helena Avenue**



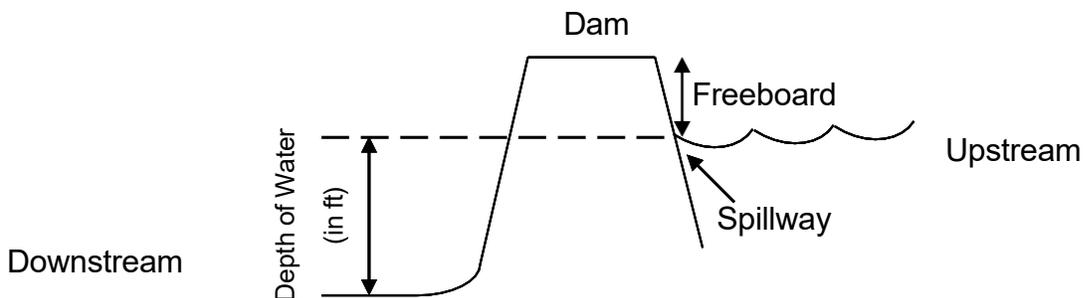
- b. For reservoirs of **rectangular or irregular shape**, measure a rectangular shape that approximates the size and multiply the width times the length and divide by 43, 560. See illustration below.



To Calculate Surface Area = **(Width x Length)/43,560**

## 2. Determine the maximum depth of the water.

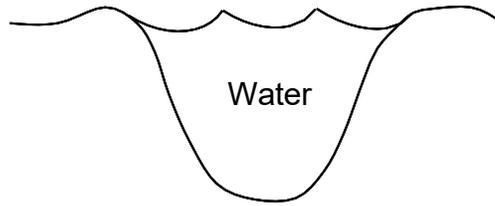
- a. The depth of water can be measured from the lowest point on the downstream side of the dam up to the top of the spillway, as illustrated below. The depth can also be determined by measuring the total height of the dam and subtracting the freeboard.



## 3. Determine the reservoir capacity.

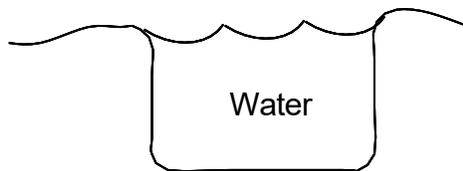
- a. Capacity can be determined by multiplying the surface area (acres) by the maximum depth of water (feet) by 0.4. The 0.4 factor is to allow for V-shaped sides of a reservoir. If the sides and bottom are nearly square, there is no factor.

*V-Shaped Reservoir Capacity*



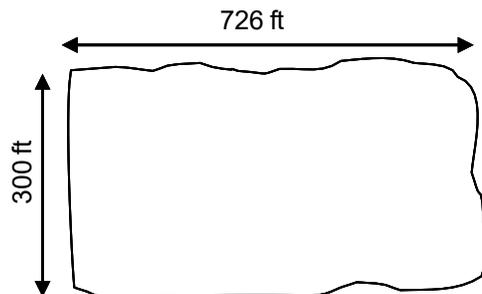
To Calculate Reservoir Capacity: **Surface Area (acres) x Maximum Depth (ft) x 0.4**

*Flat Bottom, Square-sided Reservoir Capacity*



To Calculate Reservoir Capacity: **Surface Area (acres) x Maximum Depth (ft)**

**EXAMPLE:**

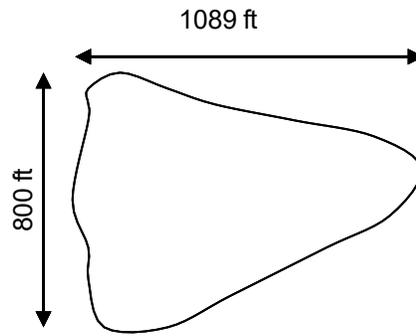


1. Smith Creek Reservoir is approximately 300' in width and 726' in length.

To Calculate Surface Area: **(Width x Length)/43,560**  
**(300' x 726')/43,560 ft<sup>2</sup>/acre**  
**= 5 acres**

2. Maximum depth measured is 8'.
3. The dam was dug, so the bottom is flat and the sides are nearly square.
4. **Capacity = 5 acres x 8' = 40 acre-feet.**

**EXAMPLE:**



1. Trout Reservoir measures 800' in width and 1089' in length.

To Calculate Surface Area: **(Width x Length)/43,560**  
**[( 1/2 x 800') x (1089')]/43,560 ft<sup>2</sup>/acre**  
**= 10 acres**

- 2. Maximum depth measured is 9'.
- 3. The reservoir was constructed in a coulee, so the sides are v-shaped.
- 4. **Capacity = 10 acres x 9' x 0.4 = 36 acre-feet**

[AMENDMENT FORM \(DNRC\)](#)

Fillable Form Available on MMBD Data Drive

## AMENDMENT TO STATEMENT OF CLAIM

Claim Number(s): \_\_\_\_\_

Owner(s): \_\_\_\_\_

I make the following amendment(s) to the above statement of claim(s):

(Complete only those sections that require amendment.)

1. **Purpose (use):** \_\_\_\_\_

a. **If irrigation, method of irrigation use**  **Sprinkler**  **Flood**  **Water spreading**

Subirrigation  Natural Overflow

b. **If domestic, number of households served:** \_\_\_\_\_

c. **If stock, total number and type of livestock served:** \_\_\_\_\_

2. **Source of Water:** \_\_\_\_\_ **Tributary of** \_\_\_\_\_

3. **Point of Diversion:** County - \_\_\_\_\_  See attachment

\_\_\_\_ Lot \_\_\_\_ Block \_\_\_\_ <sup>1</sup>/<sub>4</sub> \_\_\_\_ <sup>1</sup>/<sub>4</sub> \_\_\_\_ <sup>1</sup>/<sub>4</sub> Section \_\_\_\_ T \_\_\_\_ R \_\_\_\_

\_\_\_\_ Lot \_\_\_\_ Block \_\_\_\_ <sup>1</sup>/<sub>4</sub> \_\_\_\_ <sup>1</sup>/<sub>4</sub> \_\_\_\_ <sup>1</sup>/<sub>4</sub> Section \_\_\_\_ T \_\_\_\_ R \_\_\_\_

\_\_\_\_ Lot \_\_\_\_ Block \_\_\_\_ <sup>1</sup>/<sub>4</sub> \_\_\_\_ <sup>1</sup>/<sub>4</sub> \_\_\_\_ <sup>1</sup>/<sub>4</sub> Section \_\_\_\_ T \_\_\_\_ R \_\_\_\_

Subdivision \_\_\_\_\_

Replaces claimed information  Supplements claimed information  Addendum included

**If the P.O.D is being amended, attach a map showing all points of diversion for this water right.**

4. **Period of Diversion:** \_\_\_\_\_

(Month/Day TO Month/Day)

5. **Means of Diversion:**  Well  Instream Use  Dam

Headgate  Pump: Capacity - \_\_\_\_\_ gpm

Other - \_\_\_\_\_

6. **Means of Conveyance:**  Ditch  Pipeline  Instream Use

Other - \_\_\_\_\_

7. **Place of Use:** County - \_\_\_\_\_  See attachment

\_\_\_\_ acres \_\_\_\_ Lot \_\_\_\_ Block \_\_\_\_ <sup>1</sup>/<sub>4</sub> \_\_\_\_ <sup>1</sup>/<sub>4</sub> \_\_\_\_ <sup>1</sup>/<sub>4</sub> Section \_\_\_\_ T \_\_\_\_ R \_\_\_\_

\_\_\_\_ acres \_\_\_\_ Lot \_\_\_\_ Block \_\_\_\_ <sup>1</sup>/<sub>4</sub> \_\_\_\_ <sup>1</sup>/<sub>4</sub> \_\_\_\_ <sup>1</sup>/<sub>4</sub> Section \_\_\_\_ T \_\_\_\_ R \_\_\_\_

\_\_\_\_ acres \_\_\_\_ Lot \_\_\_\_ Block \_\_\_\_ <sup>1</sup>/<sub>4</sub> \_\_\_\_ <sup>1</sup>/<sub>4</sub> \_\_\_\_ <sup>1</sup>/<sub>4</sub> Section \_\_\_\_ T \_\_\_\_ R \_\_\_\_

\_\_\_\_ acres \_\_\_\_ Lot \_\_\_\_ Block \_\_\_\_ <sup>1</sup>/<sub>4</sub> \_\_\_\_ <sup>1</sup>/<sub>4</sub> \_\_\_\_ <sup>1</sup>/<sub>4</sub> Section \_\_\_\_ T \_\_\_\_ R \_\_\_\_

\_\_\_\_ **Total Acres** Subdivision \_\_\_\_\_

Replaces claimed information  Supplements claimed information  Addendum included

**If the P.O.U. is being amended, attach a map showing entire place of use for this water right.**

8. **Flow Rate Claimed:** \_\_\_\_\_  cubic feet per second  
 gallons per minute  
 miner's inches

9. **Volume Claimed:** \_\_\_\_\_ acre-feet per year

10. **Period(s) of Use:** \_\_\_\_\_  
(Month/Day TO Month/Day)

11. **Priority Date:** *(date of first use)* \_\_\_\_\_  
(Month/Day/Year)

12. **Type of Historical Right:**  Deeded Right  
 Filed Appropriation Right  
 Use Right

Please attach proof of  
priority date or type of right.

13. **Reasons for Amendment:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. **Comments:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

15. **Statement Signed by Owner:**  See attachment

I declare under penalty of perjury (§ 45-7-201, MCA) under the laws of the state of Montana that the foregoing content of this form is true and correct. I further declare that I have the authority to sign this document for myself as an individual or in representational capacity as an officer of a corporation, member of a limited liability company, general partner of a limited partnership, trustee for a trust or other official capacity for an entity as defined under "person" in §85-2-102, MCA. ***(All current owners of the right as listed in the DNRC centralized record system are required to sign. Please attach DNRC's Amendment Agreement form if additional owner signatures are needed.)***

\_\_\_\_\_  
Typed or Printed Name Office/Title

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Typed or Printed Name Office/Title

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Typed or Printed Name Office/Title

\_\_\_\_\_  
Signature Date

## SECOND AMENDED ORDER ON PERIOD OF DIVERSION, 2014

Issued 11.10.2014

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### **SECOND AMENDED ORDER ON PERIOD OF DIVERSION - STATEWIDE**

On December 11, 2008 this Court issued a statewide Order providing instructions to the Department of Natural Resource-sand Conservation (DNRC) on examination of period of diversion. The DNRC was instructed to comply with the provisions of Exhibit A, attached that Order. That Order provided that after a period of implementation, the Water Rights Adjudication Bureau Chief would advise if Exhibit A required rule 111enl. DNRC has suggested changes to its examination process. Accordingly, this Order revises Exhibit A and supersedes the Amended Order on Period of Diversion-Statewide issued December 11, 2008.

The DNRC prepares a summary report of each claimed water right including, where appropriate, a period of diversion. Rules S(a) and 5(a)(3)(vi), W.R.C.E.R.

Period of diversion is the "period in a calendar year when water is diverted, impounded, or withdrawn from the source." Rule 2(a)(50), W.R.C.E.R.

Period of use is the "period in a calendar year when water is used for a specified beneficial use." Rule 2(a)(51), W.R.C.E.R.

After consulting with the DNRC, the Court concludes it is appropriate to simplify the process of identifying a period of diversion on all water right claim abstracts.

IT IS HEREBY ORDERED:

1. The DNRC, during its claims examination process, shall examine all existing water right claims to determine the inclusive period of diversion dates for each claim; and, when necessary, the DNRC shall contact the claimant for further information;
2. The DNRC shall examine the period of diversion in accordance with Amended Exhibit A;
3. The Water Court will adjudicate the period of diversion in accordance with Exhibit B;
4. This Amended Order supersedes the Court's December 11, 2008 Amended Order on Period of Diversion - Statewide and any similar directions provided to the DNRC between December 11, 2008 and the date of this Order.

**Amended Exhibit A**

## DNRC Period of Diversion Claim Examination

### Instructions to the DNRC:

Period of diversion dates shall be printed on all abstracts generated for existing water right claims. The DNRC shall program Trident to automatically add a P164 information remark to the bottom of all abstracts generated for claims. The P164 remark will be similar to the following:

**STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.**

### In basins decreed after September 2014:

The period of diversion dates for all claims involving surface and ground water pits and reservoirs shall be printed on all claim abstracts as follows:

1. For claims involving surface water pits and reservoirs with a claimed volume greater than 15.00 AF:

- a. The DNRC shall contact the claimant to determine the period of diversion pursuant to Rule. 10(b), W.R.C.E.R. DNRC shall notify claimants that if they do not respond to the DNRC's enquiry, the DNRC will add a period of diversion to their claim that matches the period of use.
- b. If the claimant identifies the period of diversion, the DNRC shall add the period of diversion to the abstract and remove the P164 -information remark from the abstract.
- c. If the claimant contact is inconclusive or the period of diversion dates are not identified, the DNRC shall add a period of diversion to the claim that matches the period of use, add a P160A issue remark to the claim, and remove the P164 information remark from the abstract.
- d. The P160A issue remark will be similar to the following

**THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.**

2. For claims involving groundwater pits with any volume, and surface or ground water pits and reservoirs with a claimed volume of 15.00 AF or less:

a. The period of diversion shall be year-round, a P162 information remark shall be added to the abstract, and the P164 information remark removed from the abstract

b. The P162 information remark will be similar to the following:

**THE PERIOD OF DIVERSION HAS BEEN STANDARDIZED BY DNRC FOR THIS CLAIM.**

3. For all other claims, including non-reservoir claims and natural lakes, the period of diversion dates shall be the same as the period of use.

4. For claims where the DNRC has placed any period of use issue. remarks on an abstract, the DNRC shall also add a period of diversion issue remark similar to the following.:

**THE PERIOD OF DIVERSION MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF THE PERIOD OF USE ISSUE.**

5. P161 issue remarks shall not be placed on claim abstracts in basins decreed after October 2008.

**In basins decreed prior to October 2008:**

Claims in basins decreed prior to October 2008 were handled in the following manner. This Order does not apply retroactively to those claims.

1. Period of diversion dates were printed on all previously decreed basin abstracts.

2. A P161 issue remark was added to the bottom of all abstracts except:

a. Non-reservoir claims where period of diversion was equal to period of use;

b. Onstream reservoir claims where period of diversion was equal to period of use and was from January 1 to December 31;

c. Reservoir claims in basin 411), 410, 41QJ, 42B, 42C and 76FA.

3. The P161 issue remark is similar to the following:

**WHEN THIS CLAIM WAS ORIGINALLY DECREED, THE PERIOD OF DIVERSION WAS NOT INCLUDED ON THE ABSTRACT OF THIS CLAIM. IN 2008, THE PERIOD OF DIVERSION WAS ADDED. IT IS NOT CERTAIN IF THE PERIOD OF DIVERSION DATES ON THIS CLAIM ACCURATELY REFLECT THE HISTORICAL PERIOD OF DIVERSION. MORE INFORMATION IS REQUIRED.**

**Exhibit B**

**Period of Diversion Adjudication**

**Water Court Procedures:**

**In basins decreed after October 2008 (42A, 43E, 43O, 43P, 41A, 40R, 40T, 40F, 40I, 40J, 40M, 41L, 41P, 41M, 41B, 76 LJ, 408, 76 HA, 76L, 41J, 76F, 41O, 41T, 40EJ, 4JR, 42M, 43N):**

1. During Summary Review, the Water Master will verify that period of diversion dates and appropriate information and issue remarks appear on all abstracts.
2. During adjudication, the Water Master will resolve all P160 issue remarks.

**In one decree basins (41O, 41D, 41OJ, 76FA, 428, 42C, 43O, 42KJ, 76HF, 40O, 40S, 40H, 38H, 39H, 40P, 42J, 42J, 42I, 39G, 40D, 40G, 40J-V, 41N, 42K, 43OJ, 40O):**

1. The Water Master will resolve P161 issue remarks when resolving objections, issue remarks, or when other reasons bring the claim to the Court's attention.

**In two decree basins (41F, 41S, 41U, 43BV, 768, 76C, 76D, 76E, 76GJ, 76J, 76J, 76K, 76M, 76N, 39E, 39F, 39FJ, 40A, 40E1 40L, 41F., 41H, 41K, 43B, 43BJ, 43C, 76G, 43A, 40K, 41G, 40C, 41C, 76HB, 43D, 76HE, 41I):**

1. The Water Master will resolve P161 issue remarks when the second decree is issued or, if appropriate, while resolving objections, issue remarks, or when other reasons bring the claim to the Court's attention.

**When making claimant contact, the Water Master may use the questionnaire provided in Exhibit C.**

**Exhibit C**

**PERIOD OF DIVERSION**

The Period of Diversion is the period in the calendar year when water is diverted into a reservoir (off stream) or impounded by a reservoir (on stream). It is distinct from the Period of Use which is the period in the calendar year when water is put to a beneficial use. The Period of Diversion and Period of Use may be the same, they may overlap, or they may be completely different. The Period of Diversion claimed must reflect the use of this claim prior to July 1, 1973.

I/we hereby request the Period of Diversion listed below for water right claim

\_\_\_\_\_.

- The Period of Diversion for this claim is January 1 to December 31.

- The Period of Diversion for this claim is the same as the Period of Use that appeared on the Abstract of Water Right Claim in the Water Court's most recent Decree of this claim.
  
- Other (explain).\_\_\_\_\_

SUPPLEMENTAL ORDER REGARDING FISH AND WILDLIFE, WILDLIFE, AND RECREATION CLAIMS, 2013

Issued 04.17.2013

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**SUPPLEMENTAL ORDER REGARDING FISH AND WILDLIFE, WILDLIFE, AND RECREATION CLAIMS**

**-STATEWIDE 2013-**

The Water Court has received a number of inquiries from Department of Natural Resources (DNRC) personnel and Water Masters regarding examination and post-decree handling of fish and wildlife, wildlife, and recreation claims. The Water Court's December 14, 2012 Order Addressing Reexamination addressed some of the issues pertaining to these claims.

The purpose of this Supplemental Order is to provide additional guidance regarding examination and post-decree treatment of fish and wildlife, wildlife, and recreation claims. This Supplemental Order differs from the December 14, 2012 Order Addressing Reexamination. To eliminate any confusion, this Supplemental Order supersedes Part IV of the December 14, 2012 Order Addressing Reexamination.

Listed below are common variations of fish and wildlife, wildlife, and recreational claims. Some variations of these claims are covered by existing claims examination rules, while some are not. Where a rule covers a particular right and application of the rule is clear, apply the rule. Where a rule is unclear, or it does not appear to fit the claim under review, follow this Supplemental Order.

There will inevitably be instances where application of a rule is uncertain, and this Supplemental Order does not provide sufficient guidance. In these circumstances, remember that a claim is prima facie evidence of its content and historical beneficial use is the measure of a water right. Apply common sense and good judgment based on your expertise.

**CATEGORY I. Claims diverted without a Reservoir. Rule 29(b)(1).**

Examples of types of diversions falling within this category of claim may include: spring boxes, developed springs, diversion dams, headgates, wells, pumped diversions, gravity flow or other pipelines, any right using a man-made diversion resulting in a measurable flow rate, including wildlife drinking directly from any of these systems.

- How to Examine Flow Rate:

Under Rule 29(b)(1)(i), the flow rate guideline is the capacity of the diversion and conveyance system. If the capacity of the diversion and conveyance system cannot be determined, then leave flow rate as claimed and issue remark as follows:

THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM CANNOT BE DETERMINED AND THE FLOW RATE REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

If you have information on the actual capacity of the diversion and conveyance system and the flow rate is equal to or lower than the actual capacity, then leave the claimed flow rate unchanged and unremarked.

If you have information on the capacity of the diversion and conveyance system and the claimed flow rate exceeds this capacity, then consult the statement of claim or information obtained from claimant contact to determine if the claimed flow rate is justified. If it is justified, then leave the flow rate unchanged and unremarked.

If the flow rate cannot be justified after seeking additional information, reduce flow rate as required by Rule 29(g). This reduction should only occur for filed and use rights, or decreed rights with no decreed flow rate. If reduced, attach the proper flow rate remark per Rule 29(g)(2)(ii).

- How to Examine Volume:

Under Rule 29(b)(1)(ii), the volume guideline is defined as what is "reasonable and customary" for a specific purpose. Volume should remain as claimed in the absence of substantial information that claimed volume is unreasonable. If volume is left as claimed, use the following remark:

THE VOLUME OF THIS CLAIM CANNOT BE DETERMINED FROM AVAILABLE INFORMATION, AND VOLUME REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

Do not use this remark if you have otherwise determined the claimed volume is within the "reasonable and customary" guideline.

## **CATEGORY II. Claims Diverted with an On-stream Reservoir. Rule 29(c).**

- How to Examine Flow Rate:

Under Rule 29(c)(1), flow rates for these rights are not decreed. Add a remark stating no flow rate decreed.

FF007: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

- How to Examine Volume:

Proceed in accordance with Rule 29(c)(1)(ii)(A) and (B).

When volume is less than 15 acre-feet, leave as claimed and do not remark.

When the claimed volume exceeds 15 acre-feet, the volume guideline is maximum storage capacity plus the estimate of evaporation. Leave the volume unchanged and unremarked if it is less than or equal to the guideline.

If volume exceeds this guideline for non-decreed rights, or decreed rights without a decreed volume, then consult the statement of claim or information obtained from claimant contact to determine if the claimed volume is justified. If it is justified, then leave the volume unchanged and unremarked.

If the volume cannot be justified after seeking additional information, then remark as follows:

CLAIMED VOLUME EXCEEDS CAPACITY OF RESERVOIR PLUS EVAPORATIVE LOSSES. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

Do not remark volume for decreed rights with a decreed volume.

**CATEGORY III. Claims Diverted with an Off-stream Reservoir. Rule 29(c). (Also includes off-stream manmade pits).**

- How to Examine Flow Rate:

Under Rule 29(c)(1)(i), the flow rate guideline is the capacity of the diversion and conveyance system.

If you have information on the actual capacity of the diversion and conveyance system and the flow rate is equal to or lower than the actual capacity, then leave the claimed flow rate unchanged and unremarked.

If you have information on the capacity of the diversion and conveyance system and the claimed flow rate exceeds this capacity, then consult the statement of claim or information obtained from claimant contact to determine if the claimed flow rate is justified. If it is justified, then leave the flow rate unchanged and unremarked.

If the flow rate cannot be justified after seeking additional information, reduce flow rate as required by Rule 29(g). This reduction should occur only for filed and use rights, and decreed rights with no decreed flow rate. If reduced, attach the proper flow rate remark per Rule 29(g)(2)(ii).

If there is no information concerning capacity of diversion and conveyance system, or the system is shared by more than one claimant, the flow rate guideline is that which is reasonable and customary for the specific purpose. Under these circumstances, flow rate should remain as claimed. If flow rate is left as claimed, use the following remark:

THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM CANNOT BE DETERMINED AND THE FLOW RATE REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

- How to Examine Volume:

Proceed in accordance with Rule 29(c)(1)(ii)(A) and (8).

When volume is less than 15 acre-feet, leave as claimed and do not remark.

When the claimed volume exceeds 15 acre-feet, the volume guideline is maximum storage capacity plus the estimate of evaporation. Leave the volume unchanged and unremarked if it is less than or equal to the guideline.

If volume exceeds the guideline for non-decreed rights, or decreed rights without a decreed volume, then consult the statement of claim or information obtained from claimant contact to determine if the claimed volume is justified. If it is justified, then leave the volume unchanged and unremarked.

If the volume cannot be justified after seeking additional information, then remark as follows:

CLAIMED VOLUME EXCEEDS CAPACITY OF RESERVOIR PLUS EVAPORATIVE LOSSES. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

Do not remark volume for decreed rights with a decreed volume.

**CATEGORY IV. Instream Flow Claims. Rule 29(d). (Also includes undeveloped springs).**

- How to Examine Flow Rate and Volume:

The guidelines in Rule 29(d) state that flow rate and volume are the minimum amounts necessary to sustain the specific purpose.

Determining the minimum amount necessary to sustain a specific purpose can be subjective'. In the absence of substantial evidence that claimed flow rate or volume departs from the guideline, flow rate and volume should remain as claimed. If flow rate and volume are left as claimed, use the following issue remark:

A GUIDELINE FOR THE FLOW RATE AND VOLUME OF THIS CLAIM CANNOT BE DETERMINED FROM AVAILABLE INFORMATION, AND FLOW RATE AND VOLUME REMAIN AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE AND VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE AND VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

Do not use this remark if you have otherwise determined that the claimed flow rate and or volume are correct.

#### **CATEGORY V. Intake Claims. Not Covered by Rule. Apply Rule 29(c).**

- How to Examine Flow Rate:

These claims are not specifically covered by rule. Treat these claims the same as on-stream reservoir claims in CATEGORY II. Proceed by applying Rule 29(c)(1). Because these claims are instream, no flow rate will be decreed.

- How to Examine Volume:

These claims are not specifically covered by rule. Treat these claims the same as on-stream reservoir claims in CATEGORY II. Proceed in accordance with Rule 29(c)(1)(ii){A} and (B).

#### **CATEGORY VI. Pothole lakes. Not Covered by Rule.**

This category generally covers impoundments without surface inflow and includes natural pits, manmade pits without surface inflow, and groundwater pits.

- How to Examine Flow Rate:

Not Covered by Rule. Potholes do not have a flow rate. No flow rate should be decreed for these claims.

- How to Examine Volume:

An Order issued by Judge Lessley on August 7, 1987 provides volume should be quantified as claimed on federal wildlife pothole lake claims. Volume for these rights is not otherwise covered by rule. Judge Lessley's August 7, 1987 Order is hereby expanded to include

all wildlife pothole claims, not just wildlife pothole claims made by the United States. This means all wildlife pothole lake claims should have volume decreed as claimed.

**Application of Judge Lessley's 1985 and 1987 Orders.**

As discussed in CATEGORY VI above, the Order issued by Judge Lessley on August 7, 1987 pertaining to federal claims for wildlife water rights in pothole lakes will remain in effect, and should continue to be applied.

Judge Lessley issued a related Order on June 17, 1985. It specifies that volumes will be established as claimed for federal wildlife claims for all lakes and reservoirs. The Water Right Claim Examination Rules cited above were adopted by the Montana Supreme Court after Judge Lessley's 1985 Order. In some instances, those Rules, and the provisions of this Supplemental Order, contradict Judge Lessley's June 17, 1985 Order. Accordingly, Judge Lessley's June 17, 1985 Order is partially superseded and no longer applies to federal fish and wildlife, wildlife, and recreation claims with a lake or reservoir.

REQUEST TO WITHDRAW STATEMENT OF CLAIM / INTEREST IN STATEMENT OF CLAIM

Fillable Form Available on MMBDATA Drive

**REQUEST TO WITHDRAW STATEMENT OF CLAIM OR INTEREST IN STATEMENT OF CLAIM**

I/We, \_\_\_\_\_ hereby request the withdrawal or withdrawal of interest of Statement of Claim Number \_\_\_\_\_.

The reason for this request is:

\_\_\_\_\_ I/We have an existing right which is exempt from filing.

\_\_\_\_\_ This claim was for a use of water after July 1, 1973.

\_\_\_\_\_ I/We have no existing water right to claim.

\_\_\_\_\_ I/We have no interest in said Statement of Claim

\_\_\_\_\_ Other/Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Statement Signed by Owner:**

I declare under penalty of perjury (§ 45-7-201, MCA) under the laws of the state of Montana that the foregoing content of this form is true and correct. I further declare that I have the authority to sign this document for myself as an individual or in representational capacity as an officer of a corporation, member of a limited liability company, general partner of a limited partnership, trustee for a trust or other official capacity for an entity as defined under “person” in §85-2-102, MCA. **(All current owners of the right as listed in the DNRC centralized record system are required to sign. Please attach DNRC’s Withdrawal Agreement form if additional owner signatures are needed.)**

\_\_\_\_\_  
(Date Signed) (Signature of Claimant) (Office or Title)

\_\_\_\_\_  
(Date Signed) (Signature of Claimant) (Office or Title)

WITHDRAWAL AGREEMENT

Fillable Version Available on MMBDATA Drive

REQUEST TO WITHDRAW STATEMENT OF CLAIM OR INTEREST IN STATEMENT OF CLAIM

I/We, \_\_\_\_\_ hereby request the withdrawal or withdrawal of interest of Statement of Claim Number \_\_\_\_\_.

The reason for this request is:

\_\_\_\_\_ I/We have an existing right which is exempt from filing.

\_\_\_\_\_ This claim was for a use of water after July 1, 1973.

\_\_\_\_\_ I/We have no existing water right to claim.

\_\_\_\_\_ I/We have no interest in said Statement of Claim

\_\_\_\_\_ Other/Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Statement Signed by Owner:

I declare under penalty of perjury (§ 45-7-201, MCA) under the laws of the state of Montana that the foregoing content of this form is true and correct. I further declare that I have the authority to sign this document for myself as an individual or in representational capacity as an officer of a corporation, member of a limited liability company, general partner of a limited partnership, trustee for a trust or other official capacity for an entity as defined under “person” in §85-2-102, MCA. (All current owners of the right as listed in the DNRC centralized record system are required to sign. Please attach DNRC’s Withdrawal Agreement form if additional owner signatures are needed.)

\_\_\_\_\_  
(Date Signed) (Signature of Claimant) (Office or Title)

\_\_\_\_\_  
(Date Signed) (Signature of Claimant) (Office or Title)

\_\_\_\_\_  
(Date Signed) (Signature of Claimant) (Office or Title)

ORDER REGARDING ISSUE REMARKS IN BASINS UNDER REEXAMINATION

Filed 08.24.2017

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IT IS ORDERED that all issue remarks containing the following language shall be removed from summary reports provided by the DNRC to the Water Court:

TO ASSURE THE ORDERLY ADMINISTRATION OF WATER RIGHTS, THE WATER COURTS WILL SET A HEARING TO DETERMINE THESE ISSUES IF NO OBJECTIONS ARE MADE.

THE WATER COURT WILL HOLD A HEARING ON THIS CLAIM TO DETERMINE ITS VALIDITY SUBJECT TO SECTION 85-2-248, MCA, AND MATTER OF THE ADJUDICATION OF EXISTING RIGHTS IN BASIN 411, 2002 MT 216, 311 MONT. 327, 55 P.3D 396. A HEARING MAY ALSO BE HELD ON THIS CLAIM IF A VALID OBJECTION IS FILED UNDER SECTION 85-2-233, MCA, OR THE WATER COURT CALLS THE CLAIM IN ON ITS OWN MOTION UNDER RULE 8, W.R.ADJ. R.

BECAUSE THIS CLAIM DID NOT RECEIVE A FACTUAL OR LEGAL ISSUE REMARK DURING THE CLAIMS EXAMINATION PROCESS, THE WATER COURT WILL NOT HOLD A HEARING ON THIS CLAIM UNDER MATIER OF THE ADJUDICATION OF EXISTING RIGHTS IN BASIN 411, 2002 MT 216, 311 MONT. 327, 55 P.3D 396 UNLESS A VALID OBJECTION IS FILED UNDER SECTION 85-2-233, MCA, OR THE WATER COURT CALLS THE CLAIM IN ON ITS OWN MOTION UNDER RULE 8, W.R.ADJ. R.

## STATEWIDE ORDER REGARDING INTERBASIN TRANSFER CLAIMS

Filed 12.09.2022

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The Water Use Act requires the Water Court to adjudicate water rights and enter final decrees. For all existing rights arising under either the laws of the State of Montana or federal law, final decrees must state priorities and several other specific elements including point of diversion and place of use. Section 85-2-234(6) & (7), MCA.

Prior to issuance of final decrees, the Water Court administers the adjudication process that provides for the filing of statements of claim, the issuance of various types of preliminary decrees, and the resolution of issue remarks and objections to claims. The Water Use Act requires the Department of Natural Resources and Conservation (“DNRC”) to provide “such information and assistance as may be required by the water judge to adjudicate claims of existing rights.” Section 85-2-243(1)(a), MCA. Part of this assistance involves DNRC examining water right claims and “reporting data, facts, and issues pertaining to the claims of existing rights.” Rule 1(b), W.R.C.E.R. DNRC conducts this examination pursuant to its Water Right Claims Examination Rules. DNRC reports the information to the Water Court by issuing a “summary report” for each basin that includes “a summary of the department’s findings for each claim within a basin or subbasin.” Rule 2(a)(66), W.R.C.E.R.

The Claims Examination Rules require DNRC to identify “interbasin transfers.” An interbasin transfer exists when a claim’s point of diversion “is in one basin and the place of use, or a portion thereof, is in another basin.” Rule 8(c), W.R.C.E.R. The rules require DNRC to identify in summary reports to the Water Court an interbasin transfer for both the place of use basin and the point of diversion basin. The rules also require DNRC to include in the summary report “a remark identifying an interbasin transfer of water.” Rule 8(e), W.R.C.E.R. The rules then provide several examples of remark language. Each of the examples (remark codes T1, T10, T15, and T20) in the rules describe the details of the interbasin transfer, and also includes the following additional language:

ANY OBJECTION TO THIS RIGHT MAY BE FILED DURING THE OBJECTION PERIODS FOR EITHER THE POINT OF DIVERSION OR PLACE OF USE BASIN.

The Water Use Act assigns to the Water Court responsibility for issuing preliminary decrees. Section 85-2-231(2), MCA. Issuance of a preliminary decree commences an objection process with specific deadlines controlled by the Court. Section 85-2-233(2), MCA. The Water Use Act does not require that any claim be decreed in multiple basins, nor does it provide for the filing of objections to a claim outside the objection period.

The portion of the interbasin transfer remark quoted above goes beyond what the statute requires and has potential unintended consequences because it implicitly suggests an interbasin transfer claim will be included in multiple decrees and subject to multiple objection periods.

Such a result potentially forces a claimant to defend a single claim from objections in multiple cases. It also potentially delays issuance of final decrees if a claim is closed in one basin, but could still face the possibility of an objection in another basin.

Nothing in the Water Use Act, or the Water Court’s Water Right Adjudication Rules supports decreeing a single claim in multiple decrees with multiple objection periods, which is the outcome the remark language suggests. Instead, to align these claims with all other claims, interbasin transfer claims in future preliminary decrees should be decreed only in the basin of the claim’s point of diversion, even if all or part of the claim’s place of use is in a different basin.

(For purposes of this Order, the term “preliminary decree” also includes temporary preliminary decrees, supplemental preliminary decrees, and interlocutory decrees issued by the Court.)

Decreeing a claim only in the basin of its point of diversion does not conflict with the notice provisions of the Water Use Act. The Act requires the Court to mail notice of availability of a preliminary decree to various persons, including “each person who has filed a claim of existing right within the decreed basin.” Section 85-2-232(1)(b), MCA (emphasis added). Continuing to provide notice to persons in the basin where the water source is located meets this requirement. The Act does not require the mailing of notice to persons who file claims in other basins. Moreover, the Act’s newspaper notice provisions – which more broadly cover the “water division or divisions in which the decreed basin is located,” provide notice to persons outside the point of diversion basin of the decreed right and the opportunity to object. Section 85-2-232(3), MCA. Revising the remarks and limiting interbasin transfer claims to a single decree does not eliminate any notice or objection rights that exist by statute.

Finally, final decrees must state “any other information necessary to fully define the nature and extent of the right.” Section 85-2-234(6)(i) & (7)(h), MCA. The Water Court includes this additional information in the form of “information remarks” that appear on the face of water right abstracts. Other than the sentence regarding objections to interbasin transfer claims, the remainder of each remark is a proper information remark because information that water has been conveyed out of its point of diversion basin may be useful in future administration of the right. See, e.g., *Hidden Hollow Ranch v. Fields*, 2004 MT 153, 321 Mont. 505, 92 P3d 1185 (discussing water management implications of imported water). Thus, DNRC should continue to include interbasin transfer information remarks in summary reports for the point of diversion basin, but without language about the filing of objections.

## **ORDER**

Based upon the foregoing and effective immediately, IT IS ORDERED:

1. The following language shall be removed from all interbasin transfer information remarks (remark codes T1, T10, T15, and T20) on summary reports provided by the DNRC to the Water Court:

ANY OBJECTION TO THIS RIGHT MAY BE FILED DURING THE OBJECTION PERIODS FOR EITHER THE POINT OF DIVERSION OR PLACE OF USE BASIN.

2. DNRC shall include claims with an interbasin transfer information remark (remark codes T1, T10, T15, and T20, without the objection language) only on summary reports for the basin that includes the described point of diversion. No water right claim shall be included on a summary report for a basin other than the basin of the point of diversion, regardless of whether all or any portion of the place of use is located in a different basin.

3. This Order supersedes all prior orders of the Court, if any, regarding objections to interbasin transfers to the extent they conflict with these provisions.

## ORDER ON SPLIT CLAIM REMARKS

Filed .04.26.2011

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Pursuant to Rule 26, W.R.Adj.R., the Water Court has the authority to split water right claims on the request of the parties or on the Court's own initiative. When a claim is split, one water right claim is divided into two or more claims. During the split process, one claim retains the original claim number while the other claim or claims receive new claim numbers. The claim that retains the original number is often called the "parent" claim and a claim designated with a new number is often called the "child" or "split" claim. It is arbitrary which claim retains the original claim number, which claim receives a new number, and which claim is termed parent, child or split.

After the split is authorized, one of the following information remarks is added to the appropriate claim abstract:

### C4 - Added to child or split claim

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. [PARENT CLAIM NUMBER].

### R13 - Added to original parent claim

SPLIT CLAIM NO. [CHILD CLAIM NUMBER] WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

### R14 - Added to original parent claim

THE SPLIT CLAIMS LISTED FOLLOWING THIS STATEMENT WERE AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM. [CHILD CLAIM NUMBERS].

Additionally, the following issue remark has historically been added to child or split claims:

### G35

CLAIM WAS NOT INCLUDED IN THE BASIN [BASIN NUMBER and PRELIMINARY/TEMPORARY PRELIMINARY] DECREE ISSUED [mm/dd/yyyy].

The G35 remark is not quite accurate. The child or split claims are included in the decree as part of the original or parent claims. What was not in the decree was the child or split claim number and that is what the remark should highlight. Furthermore, it should not be an issue remark, but an information remark. Therefore, the G35 issue remark should be modified to be an information remark to read as follows:

### G35 - Add to child or split claims

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN [BASIN NUMBER and PRELIMINARY/TEMPORARY PRELIMINARY] DECREE ISSUED [mm/dd/yyyy].

CLAIMANT CONTACT LETTER TEMPLATE (LATE CLAIMS)

Print on Standard DNRC Letterhead

Date [Month DD, YYYY]

CLAIMANT NAME

CLAIMANT ADDRESS

CLAIMANT CITY, ZIP

RE: WATER RIGHT CLAIM NO(s): 76X 1234-00

Dear Claimant(s),

**Please Read This Letter Carefully As It Concerns Your Water Rights**

The Montana Water Court and the Department of Natural Resources and Conservation (DNRC) are preparing an upcoming decree for Basin 76G. As part of this preparation, your enclosed water rights have recently been examined by DNRC, as required by Montana Supreme Court Water Right Claim Examination Rules.

Please carefully review the enclosed abstract(s). These may contain changes to your water right(s). An asterisk (\*) in the left margin indicates a change to the water right made in accordance with Montana Supreme Court Water Right Claim Examination Rules. An underlined remark indicates an issue that needs to be resolved.

Please contact DNRC within *60 days* to resolve any issues or if you have any questions. We will work to help you resolve any outstanding issues. If the issues are not addressed prior to the issuance of the upcoming preliminary decree, there will be an opportunity to resolve the issues with the Montana Water Court.

You can contact me by phone 406-555-1234 or by email at youremail@mt.gov. I would be happy to answer any questions or help you resolve any identified issues. For more information on the decree process, you can also visit our website at dnrc.mt.gov/water-resources.

Sincerely,

*Your Signature*

Your Name

Encl:

Review Abstract(s)

Examination Map

## ORGANIZATION RACI CHARTS

Chart detailing adjudication personnel RACI requirements on the following page. RACI stands for responsible, accountable, collaborate, and inform. This details how personnel are to interact and what role they play in specific tasks. Refer to these charts to for the most appropriate person to contact if you have questions.

## REEXAMINATION RACI CHART

Task	Bureau Chief	Adjudication Program Supervisor	QC Specialist	Affected Team Leads	Affected Adj Specialists	Affected Regional Managers	Post-Examination Supervisor	Post-Examination Team Members	Regional Operations Manager	TPS	Water Court	Claimant
Decree Planning (Portfolio)	C	R	I	I	I	I	I	I	I	I	A	
Basin Setup	I	A								R		
Index Creation		A		R	C					R		
Index Formatting		A		R								
Assign Basin to Team Lead		A+R		I	I		I					
Index Assignments		A		R	I	I						
Team Lead Biweekly Check-in: Program	A	R	I	C								
Team Lead Trade		A		R+C	I	I						
Team Lead Check-in: ADJ Specialists		A		R	C	I						
Accountability Check-ins: RO Staff			C	C	I	A+R			I			
Accountability Check-ins: CO Staff		A+R	C	C	I							
Accountability Check-ins: Program	A+R	C	C	C	C	C			I			
Progress Tracking (Portfolio)	A	R	I	C	I	I						
Primary for Procedural Questions		C	C	R	A	C						
Active Quality Control Checks		I	A+R	C	C	I						
Undocumented Issues/Questions		A+C	R	C	C	C	C					
Reexamination		A	I	R	R	I						
Review Abstract Cleanup				A+R	C							
Basin wide Reexamination Complete	I	A+R	C	C	I	I	I		I	C		
Review Abstracts uploaded to Records		I					A	R				
Reexam Claimant Contact Mailing		C		I	I	I	A			R		I
Reexam Claimant Contact Phones/Help		I		R	R	I	A					
Issue Resolution				C	C		I	I				A+R
Reexam Claimant Contact Scanning				R	R		A	I				
Reexam Claimant Contact Implementation				C	C	I	A	R		C		I

## TASK NOTES

Decree Planning (Portfolio)	Informed is checking the Portfolio.
Basin Setup	This is primarily a Database Admin exercise.
Index Creation	The Reexam Indexes are created in part by the Database Admins and Team Leads. The Program Supervisor will assign the individual index assignments.
Index Formatting	Team Leads need to clean up and format all indexes before work is assigned.
Assign Basin to Team Lead	The Adjudication Program Supervisor is accountable and responsible to communicate the basin schedules with Team Leads and staff.
Index Assignments	If RM's have workload concerns about assignments and office needs, they need to reach out to Team Lead, Adjudication Program Supervisor, and Regional Operations Manager.
Team Lead Biweekly Check-in: Program	This is a biweekly check-in between Adjudication Program Supervisor and Team Leads to check progress on examination work.
Team Lead Trade	If RM's or ADJ Staff have workload concerns about assignments and office needs, they need to reach out to Team Lead, Program Supervisor, and Regional Operations Manager.
Team Lead Check-in: ADJ Specialists	These are check-ins that Team Leads have with their teams. Goal is to check in on work progress and identify any blockers to completing work.
Accountability Check-ins: RO Staff	These are check-ins that Team Leads have with Supervisors (Regional Managers) on what staff are working on and quality of the work.
Accountability Check-ins: CO Staff	These are check-ins that Team Leads have with Supervisors (Adjudication Program Supervisor) on what staff are working on and quality of the work.
Accountability Check-ins: Program	The Bureau Chief is accountable for the Program. The Bureau Chief needs to ask the right questions and intervene when needed.
Progress Tracking (Portfolio)	The Adjudication Program Supervisor updates the Portfolio with input from the Team Leads. Informed is checking the Portfolio.
Primary for Procedural Questions	These checks happen during reexamination. QC specialist looks at indexes as work is being completed to make sure procedures are being followed.
Active Quality Control Checks	This is to ensure staff are being checked in on and the work products have some level of oversight.
Undocumented Issues/Questions	This is for ensuring that questions not already addressed in manual get answered and the answer documented in the manual.
Reexamination	This represents the primary work product(s).
Review Abstract Cleanup	Team Leads will remove crossed out notes on abstracts.
Basin wide Reexamination Complete	This is designation made by the Adjudication Program Supervisor.
Review Materials Uploaded to Records	The Post Exam Program is responsible to upload the Review Abstracts after the Draft Summary Prep process.
Reexam Claimant Contact Mailing	All Letters needs to be scanned into the file.
Reexam Claimant Contact Phones/Help	The Reexam teams will be be the primary public assistance.
Issue Resolution	It's the department's role to identify issues. It's the Claimant's role to resolve the issues we have identified.
Reexam Claimant Contact Scanning	The Reexam Team members will not have database access, but they are need to upload documents for the Post-Exam staff to implement. The informed here is crucial.
Reexam Claimant Contact Implementation	The Post-Exam program is accountable to implement documents when possible because they are the only ones allowed to make database changes.

**Key**

R	Responsible	The responsible person is the one who does the work to complete the task or create the deliverable. Every task should have at least one responsible person and could have several.
A	Accountable	The accountable person in the RACI equation delegates and reviews the work involved in a project. Their job is to make sure the responsible person or team knows the expectations of the project and completes work on time. Every task should have only one accountable person and no more.
C	Consulted	Consulted people provide input and feedback on the work being done in a project. They have a stake in the outcomes of a project because it could affect their current or future work.
I	Informed	Informed folks need to be looped into the progress of a project but not consulted or overwhelmed with the details of every task. They need to know what's going on because it could affect their work, but they're not decision makers in the process.